

# Legal Issues on Burma

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## Special Features

A Brief Analysis on  
SPDC's Constitutional Principles

Analysis of the National Convention  
Procedural Code

Road Map or Road Trap?

Clash of the Titans

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# A Brief Analysis on SPDC's Constitutional Principles

*Burma Lawyers' Council*

## PREFACE

### **The Constitution and Road Map in Burma**

The future constitution has become the core issue in the politics of Burma. Ironically, the ardent violators of the Constitution have retrieved it and brought the issue of the Constitution back to life. In the coming months, and in terms of resolving the political crisis, it is destined to be our top priority. For what it is worth, BLC has made a collective attempt to project its humble view. The primary objective is to encourage an open debate as to the design and the provisions of the new constitution. In exerting efforts to produce a constitution, there exist two pivotal issues. One is in respect of the constitution making process; and the other is the type of constitution that the framers would like to create. The former highlights the importance of the participation of the people and the role of the legitimate framers to draw up a constitution. The latter involves scrutinizing the essence of the constitution, on whether it will lay down the foundations for the emergence of a democratic state or one that is authoritarian.

The 104 "Constitutional Principles", which General Khin Nyunt unfurled with great fanfare as part and parcel of the Road Map, is nothing new. These were apparently formulated in the National Convention, which came to a deadlock in 1996. As a matter of fact, these were drafted long ago, soon after the military's game plan was defeated with the landslide victory for the National League for Democracy (NLD) in 1990. It took the military over two years to prepare "the Principles" as part of a new game plan to avoid the transfer of power to the

election winning party. They were launched in 1993, in the name of the National Convention, to produce a new constitution. It was a stage-managed convention, held with the majority of its composition being hand picked persons. As for the military junta's declaration No. (1), provided for in 1990, the role of the elected representatives is to draw up a new constitution. However, once again the junta has not complied with its own law. The elected representatives had only 99 out of a total of 702 delegates of the National Convention. The NLD elected representatives withdrew their participation in 1995 to record their disagreement. Since then, the National Convention has been suspended indefinitely.

Currently, the military junta is attempting to resume its National Convention by persuading the armed ethnic organizations to join, regardless of whether they have entered into a cease-fire agreement with the government or not, in order to demonstrate that progress is being made to produce a new constitution. However, the junta has failed to create the social and political environment necessary for the people to be able to debate constitutional issues freely and participate in the constitution making process. This is of paramount importance as, only when these conditions are created, will the people feel confident that the constitution reflect their own aspiration. Such a constitution will certainly be long lasting and contribute to peace, freedom, justice and development of a society. Ironically, the junta publicly prohibits the participation of grassroots people in the constitution making process by enacting law No 5/96. The offices of the election winning party are still being shut down. Hundreds of political prisoners are languishing in the prisons. Skirmishes in ethnic areas are daily occurrences, resulting in serious human rights violations. Fear prevails in the whole country due to the lack of any legal action on the Depayin Massacre that took place on May 30, 2003. This is in spite of the fact that the United Nations has called upon the junta to initiate a full and independent inquiry with international cooperation on November 18, 2003 in its fifty-eight session of General Assembly. Nobody can imagine the production of a suitable constitution for Burma under the current overwhelmingly terrible social and political conditions and while the participation of the people is intentionally denied. In the 2000s, the contemporary constitutions for Thailand and South Africa were produced, where the people residing in various corners of their country could enjoy serious debates on constitutional issues, in a suitable social and political environment. This has not been the case in Burma.

Another challenging issue is the release of the elected members and their leader Daw Aung San Suu Kyi. Subsequently, the junta, in adhering to its promises and complying with its own laws, must let them initiate the process for the drafting of the constitution. For increased participation of the ethnic representatives, an election for a constituent assembly should be held. These are unquestionable legal issues of crucial importance. The participation of the elected members is irreversible. Ultimately, there should be a referendum on the constitution drafted by the elected representatives for the people's acceptance. This is a way of not putting the cart before the horse, so to speak. In so doing, the

rule of law has to be restored as part of the movement towards a genuine peace process.

The scope of the National Convention in terms of the “Road map,” articulated by so-called Prime Minister General Khin Nyunt, is to lay down the detailed basic principles of a new Constitution. Actually, the ruling military junta already formulated these principles in 1992, before the commencement of its National Convention in January 1993, as the 104 constitutional principles. According to step 3 of the “Road map”, a new Constitution will be drafted based on these 104 principles.

Kofi Annan is quoted: “the only way to ensure that the road map process is productive and credible, and proceeds in a stable and orderly fashion, is for it to involve all political parties, national leaders, ethnic nationalities and strata of society, from the beginning” Annan emphasized the urgency of “ transition to civilian rule and the return to democracy”.<sup>1</sup>

This special issue is an attempt of the Burma Lawyers’ Council to scrutinize the aforementioned 104 principles. It aims to inform the international community and the people inside the country on whether the junta is attempting to lay down the foundations for the emergence of another authoritarian state, or that of a democratic society in which the individual rights of every citizen are protected and collective rights are preserved for all ethnic communities in Burma.

## **PART I**

### **Concept**

The concept of the State that the ruling military junta, self-claimed as the State Peace and Development Council (SPDC), visualizes is set out in the six guiding principles;

- (1) Non-disintegration of the Union;
- (2) Non-disintegration of national unity;
- (3) Stability of sovereignty;
- (4) Development of genuine multi-party democracy;
- (5) Promotion of social truths such as justice, freedom, equality & etc. in the state;
- (6) Participation of the military in the leading role of national politics in the future State.

The key concept is item 6. This is to be read in conjunction with item (10)(6), under the section regarding the Army. It reads “the army shall have the main duty

to defend and protect the constitution". These principles reflect the supremacy of the military and they are in total contradiction to the concept of a democratic State that exercises civilian supremacy.

The inherent weakness of the "SPDC's Principles" is the lack of a philosophy. Every constitution has a philosophy of its own that reflects the values that the respective society would like to create within a constitutional framework. This philosophy has to be reflected in the overall text of the constitution, commencing from the Preamble. Item 5, may come nearer to this concept in appearance, as it has mentioned the promotion of social truths such as justness, freedom and equality. In spite of this, item six has already ruined the social harmony within the society by creating the military as a privileged class, therefore, item 5 may never become a reality.

The principles, (1) to (4), are not values but slogans of authoritarian regime. A brief analysis on those principles are as follows:

### **(1) Non-disintegration of the union**

Territorial integrity is an element of every constitution. The phrase "non-disintegration" is negative and is understood in the context of secession. Such a principle should not, or cannot, be an essential requirement of society. If it is the case, the government will enjoy the authority to oppress all peaceful attempts of the people to reform the union. The government may justify their actions by arguing that the union must be protected at any expense. Actually, the union will not collapse if all ethnic groups and all social strata can enjoy equality, subject to practical and reasonable restrictions, in accordance with the constitution. As such, the values that society should seek to protect and promote are those of equality and equity to be exercised among the various ethnic nationalities.

### **(2) Non-disintegration of national unity**

National unity is a political term that is generally appreciated by most societies in the world. However, its application in the context of a constitution is vague and has many loopholes. In history, no society can guarantee national unity as an eternal value to be preserved at all times. National unity may be achieved in the event that the constitution lays down the foundation for the application of the right to self-determination not only by citizens, as individual rights, but also by ethnic groups and social strata, as collective rights. If it refers to only national unity, it will be more oriented to exercise rigid centralization in accordance with the constitution.

### **(3) Stability of Sovereignty**

The concept of maintaining the sovereignty of the state, at all costs and under

any circumstance is out of date. The current trend within the international community has created pressure on every state to give up a part of its sovereignty and accept the United Nations authority to intervene to peacefully resolve national issues that might threaten the peace and stability of their region. In addition, states are also gradually accepting the concept of universal jurisdiction, in theory, and the jurisdiction of the International Criminal Court, in practice, should they commit a war crime, genocide, a crime against humanity or a crime of aggression. As such, the sovereignty of a state can no longer be a shield under which governments can enjoy impunity for whatever crimes they commit within their national boundaries.

Essentially, in the context of a constitution, the modern concept of constitutionalism is that sovereignty derives from the people and not from the state. It is commonly realized as 'popular sovereignty', which has been exercised by many democratic countries throughout the world. Injection of military sovereignty in Burma is totally unacceptable as it denies the fundamentals of 'popular sovereignty'.

#### **(4) Development of genuine multi-party democracy;**

The people may exercise a multi-party or bipartite system however they like. What the constitution must fundamentally protect are the three basic freedoms; namely, the right to freedom of association, assembly and expression. Despite the fact that the existence of an association is allowed, it can never function well in the event that the right to freedom of assembly is deprived. More importantly, democracy may never flourish if the right to freedom of expression is denied, in spite of the fact that associations can exist and assemble. Fundamentally, the ruling military juntas have cancelled the three basic freedoms for over four decades. Unless the constitution guarantees these freedoms in the future society of Burma, the attempts of people to form their own political parties might be circumscribed; despite the formation of political parties are allowed, their assemblies might be restricted; the existence and assembly of a political party will be meaningless, in the event that the right to freedom of expression is denied. Under such a situation, multi-party democracy will remain a dream that may never become true.

#### **(5) Promotion of social truths such as justness, freedom, equality & etc. in the state;**

These are values of the society. However, they can only be implemented when social harmony among the social strata is maintained. This will happen through reference to the individual rights of every citizen and the collective rights of every ethnic and other groups; the establishment of a check and balance system between the three organs of the state-legislation, executive and judiciary; and the creation and existence of independent governmental and non governmental organizations on the basis of the rule of law. Subsequently, government is to be

formed on the basis of universal adult franchise, elected by the people. However, unfortunately, the principles are keeping silent on these essential components of constitutional framework. As a result, justness, freedom and equality will certainly be denied.

**(6) Participation of the military in the leading role of national politics in the future State.**

Within the SPDC's principles, a large group of military personnel are chosen as unelected nominees to serve in the state organs that will exercise state powers. Their participation, domination and role are imposing. The people are to exercise their sovereignty through the Union Assembly at the center, and a State Assembly in each State. The principle of the reservation of seats for military personnel contradicts the universal principle of democracy, which lays down that the will of the people should determine the form of its government.

The constitution has to provide a competitive role for the various segments of the society. Contrarily, the SPDC's constitutional principles discriminate and place the military above all other social strata. As a consequence, the role of political parties and civil society organizations, as the important determinants of a society, is denied. Existence of opposition parties is the hallmark of parliamentary democracy. Absence of all these confirms that "the SPDC principles" have been framed with the aim of creating a pseudo-presidential system dominated by the military. The constitution must command the respect and confidence of its people. On this basic test the "principles" fail miserably.

Military supremacy of society is unacceptable. The people desire and envisage a free society, where discourse and debate are given a place of honor. Society should strive to make individual responsibility compatible with community interest. Society has to be one in which self-discipline and fundamental values are promoted without imposition. Society has to be one, which contributes to civic-mindedness. The prime concern of a constitution is to usher in a society of the model set out above. A military dominated constitution will result in the erosion of all values cherished by humankind from the beginning of time. It is no wonder, therefore, that no nation permits its military to form a government or lay down its basic law. Even in countries where there is a one-party dictatorship, or countries where the communists rule, the military is kept under and not above civilian rule. There is one historic reality in the concept of power. It is that people are at the center of any political system.

A leading role of the military in politics creates two classes among the citizens and creates the appearance that the army is the savior of the people. When there is a foreign aggression, the army may play an important role. Even then, the army cannot win a war unless the war becomes the people war. For the development of

society, the first and foremost need is the absence of conflict. Conflict leads to the waste of energy and time. It leads to destruction. It generates attitudes which make living together impossible. Providing the army with a leading role in politics doesn't facilitate any attempt to create a constitutional framework through which a peaceful and proper State can emerge. It is evident from the time that General Ne Win seized power and ruled. Conflicts have multiplied; divisions have widened; and, the country has plunged in distress and poverty.

The constitution is a tool, which seeks to remove conflict. It formulates the model conditions necessary for living together in a society. The relationship between the individual and the group are coordinated by the constitution, as it lays down the conditions essential for coordination. It will produce the right kind of leadership, which is well informed about democracy and inspire them to reshape the people in accordance with the principles enshrined in the constitution. However, it may never become true as long as the military takes the leading position in politics, as was the case in twenty Latin American countries and some others in the international community.

Even the Thirty Comrades, who were recognized as freedom fighters in the history of Burma, did not demand a special role in the making of the constitution or in the Constituent Assembly, which was drawn up in the 1947 constitution. Even General Ne Win himself, when he was the head of the army, did not demand the reservation of a quota for the army in the first constituted Parliament of the country. In 1958, the Prime Minister, U Nu, requested General Ne Win to form a caretaker government when his ruling party suffered a vertical split. General Ne Win chose a cabinet of non-party and non-military men of eminence. What is argued here, is that for the army to have a political role is against the best traditions and history of Burma. It is also against the democratic tradition of the international community.

### **Disciplined Democracy, Human Security and Individual Freedoms**

The SPDC's concept of democracy is wedded to the concept of discipline, articulating the importance of security. Basically, the two are opposites. Primarily, security means human security, not state security. If you have human security, then there is no danger to the internal state security. So what is human security in the context of Burma? Is it about alleviating poverty or is it promoting the security of government? Security means protecting the vital core of all human lives in a way that enhances human freedom and fulfillment. It is built upon people's strength and aspirations. It means creating political, social, environmental, economic, military and culture systems that together give the people the building blocks of survival, livelihood and dignity. It also encourages respect for human rights and good governance among other ends. Violent conflict is the main obstacle to human security. Therefore, security in Burma's context must focus on issues related to protection and empowerment of people. When it comes to empowerment, the

people of Burma have none. This is the story of the past four decades of military rule.

The notion that empowerment propels people to develop resilience to difficult conditions has disappeared. People in Burma have lost their capacity to examine social arrangements and they have become afraid of collective action. For the people to be empowered, the constitution of a future Burma must allocate public space for opposition, space that is free from the control of the government and its cronies. Grassroots leadership, pluralism and public discussion must be encouraged and cultivated. In the name of discipline, this fundamental requirement for the development of the people should not be suppressed. Unfortunately, the SPDC does not understand the concept of human security in the context of state security. Worse still, it has never occurred to the SPDC government that human security is about, as Professor Amartya Sen aptly stated, expending individual freedom. The security agenda has to be shaped by the people and not monopolized by the military elite that is only interested in power.

This elite further marginalizes and immobilizes the people of Burma. It is an elite that has formed a permanent way to enslave the people. Our future constitution, therefore, needs to place the people and their participation at the center. The guiding principles, ironically, will become the biggest perpetrator of insecurity in years to come. It is a tragedy of Burma that the military, although it has ruled for fifty years, has not been able to secure state security, as understood by the SPDC. Their concept of state security has brought ruin and grinding poverty to the people. It has generated a permanent situation of instability, which perpetuates the violation of fundamental rights and gross human rights abuses.

It is time that the military elite breaks its mindset and follows the path that military leaders in all prospering countries are treading. The superiority complex of the military elite has spilled throughout the 104 constitutional principles, which, in a nutshell, is “the leading role of the army”. Democracy does not create discipline. Given proper mechanisms, which empower the people and enable them to participate in decision making, democracy is a formidable force, and an invincible tool to human development. Democracy has an abiding strength, which other kinds of government do not have. Democracy is a multi-handed and multi-headed giant far more powerful than a government headed by a single genius, a few talented persons or by an elite of any brand.

The principles state that it is a Republic, this is an incorrect statement. The term Republic, although not fully defined, is fundamentally one where government is formed on the basis of universal adult franchise, elected by the people.

Aung San, the national hero of Burma, has warned “The words ‘people’ and ‘democracy’ are used freely, but not always sincerely. They are only catchwords

to hoodwink the people in to placing power in the hands of those who are supposed to use that power in the interests of the people, but who eventually use them in the interests of the ruling classes against the interests of the people”.<sup>2</sup>

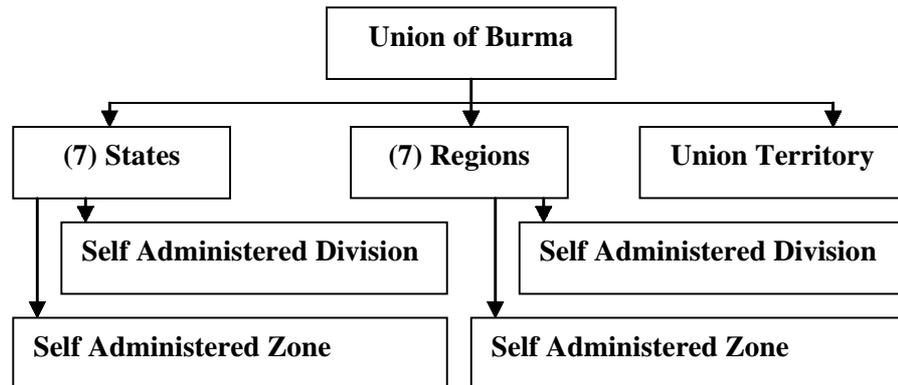
## **PART II**

### **Constituent Units**

In the SPDC’s principles, the concept of democracy is totally absent from the main three organs of the State, namely the Executive (Presidency), the Legislature and the Judiciary. The analysis given below is a corroboration of the contention that the principles are unabashed camouflage of authoritarianism. The concept, as well as the structure of the constitutional principles, is extensively flawed. It is like the mirage which ever recedes from the traveler seeking to reach it.

The formation of the State has been established on a Union System. To appreciate the “Union System”, a quick look at the types of constitution that we have throughout the world community is necessary. Generally, we have two types of “Union System”, Unitary and Federal. Unitary is one where the entire administration is run from one single center. There, the administrative power is derived from the center and it can be withdrawn by the center whenever it does not relish the performances of inferior administrative authorities. England, France, Italy, Indonesia and many other countries have Unitary Constitutions. A Federal constitution provides for the exhaustive distribution of state power between the center and constituent units. The Constituent units usually possess exclusive authority to exercise power for the benefit of their local area and the authority to deal with their concerns. Furthermore, exclusive power for the federal level is divided within the framework of the Federal Union. An independent judiciary is established to oversee all legislation, executive and administrative acts. In its choices, the people have to opt for the one which best serves the particular conditions of the country. Burma is a multi-ethnic society and the underlying issues have to be taken into account when choosing a suitable type of constitution.

Under the 1947 Constitution, the formation of the state was semi-federal, although, it was designated as a union system. Despite the fact that, to a large extent, it protected individual rights, equal rights for ethnic nationalities could not effectively be guaranteed. The 1974 Constitution, produced by General Ne Win, created seven states and seven divisions as constituent units. According to the constitution, rigid centralization was exercised under one party rule and the ethnic nationalities felt the total denial of equality. The SPDC’s Principles continue to create similar constituent units – seven states and seven divisions.



Note:

- (1) The respective Regions and States are equal in status.
- (2) They shall never secede from the State.

The SPDC's Principles mention that the State is established on a Union system, but it has not manifestly been defined. A constitutional system may be either unitary or federal, or semi-federal. The 1947 Constitution was more or less semi-federal. But it was not a presidential system, which the present SPDC's Principles for the future constitution has designed. Although it had its defects, the 1947 Constitution was based on a parliamentary system and the country enjoyed some benefits. The 1974 Constitution was a unitary one, designed under the Union system, and accordingly rigid centralization was exercised. As a result, while utterly depriving the rights of ethnic countries in the world.

The SPDC has currently reintroduced the Union system as an aggravated form, with the inclusion of union territories, which were absent in the 1947 Constitution. The Union system, which the SPDC's Principles have conceived, is worse in as much as it can easily be transformed into a highly undemocratic centralized system because the structure has not been given any inbuilt autonomy. In light of the SPDC's principles, the 7 states and 7 regions are respectively equal in status. All seven regions are populated overwhelmingly by ethnic Burman. In other words, the so-called equality ceases when they are counted in terms of numbers in respect of the house of the National Assembly.

The SPDC's Principle prescribes that "The Regions, States, Union Territories, Autonomous Units that are in the country, shall never secede from the State". This is entirely negative in formulation, which does not appear in any constitution in the world except that of the former USSR and the 1947 Constitution. In the event that a legal framework can be established in line with federalism from a positive aspect, the question of secession may not arise. The SPDC's Principles fail to enumerate substantive, exclusive competencies in the domain of state power and instead concentrate on formal and procedural ones. Although the

appearance of multi level autonomy is given, no institutional arrangements have been provided. The states have been marginalized and are forced to become development agencies of the Center.

The 1974 Constitution embraced the 7 states and 7 regions formulation. However, it was no solution to the core problem of equality of all ethnic nationalities. Knowing full well that this kind of formation would not help find a solution to the problem, no lesson has been drawn and this failed path should be abandoned. From the comparative study of world constitutions and by looking at similarities and differences and the concrete specific conditions of our Society, conclusions can be drawn that a Federal Union of Burma is the only viable solution which can lead the country to peace, harmony and developments.

### **PART III**

#### **The Legislature**

##### **The Presence of Non-elected Military in the Legislature is Against the Fundamental Principles of Democracy**

The SPDC's Principles state the Union Assembly as being the highest law making body in the whole country. The most challenging factor is the presence of non-elected military in both chambers of the Union Assembly. This is unheard of in a democracy. Their presence is quite evident as seen in the following original principles:

##### **The Union Assembly**

The Union Assembly consists of the following two Assemblies:-

- (a) The People's Assembly composed of representatives elected on the basis of population and military personnel, submitted as representatives by the Chief of Staff of the Defense Forces; and
- (b) The National Assembly composed of equal numbers of representatives, elected by the Regions and States, and military personnel submitted as representatives by the Chief of Staff of the Defense Forces.

##### **The Size of the People's Assembly**

The People's Assembly shall be composed of a maximum of 440 representatives (members)<sup>3</sup> as follows;

- (a) No more than 330 representatives elected on the basis of population; and
- (b) No more than 110 military personnel nominated and submitted as representatives, pursuant to law, by the Chief of Staff of the Defense Forces.

### **The Size of the National Assembly**

The National Assembly shall be formed with a maximum number of 224 members as follows:-

- (a) A total of 168 elected representatives, elected on the basis of 12 per Region, including the Union territories, and 12 per State, among whom shall be one representative from each Autonomous Division or Province;
- (b) A total of 56 military personnel, whom the Chief of Staff of the Defense Forces has nominated and submitted as representatives, pursuant to law, on the basis of four per Region, including Union Territories and four per State.

### **Justification of the Military for Taking a Leading Role in Public Administration**

In respect of the attempts of the military to take a leading role in public administration, Burma should draw on the experiences of Indonesia. The situations are rather similar in one way or another, therefore, Indonesia could provide Burma with some remarkable lessons. With reference to their participation in the struggle for independence, the Indonesian military claimed they were entitled to play a permanent role in political affairs. The Dwifungsi (dual function) doctrine asserted that the Indonesian military was, not just a professional military force to defend the country, but had a socio-political role which justified its involvement in all aspects of national life.<sup>4</sup> On 17 August 1945, the Republic of Indonesia was borne out of a nation-in-arms organized into irregular freedom fighter guerilla units. The Indonesian Defense Force (Tentara Nasional Indonesia - TNI) originated from these freedom fighter's irregular units, which led to the birth of the republic, therefore, it was not a military structure created by politicians.<sup>5</sup>

Contrarily, this was not the case in Burma. In Burma, civilian politicians and political parties played a major role in the struggle for independence. Under the leadership of the political party of the people, Do-ba-ma-asi-ayone, Thakin Aung San, a civilian political leader, formed the Burma Independence Army, now known as the Burma Army. It was a military structure created by civilian politicians. From a historical perspective, the military in Burma cannot justify its demands for a leading role in public administration, including legislature, in the same way that the Indonesian Army could. The justification of the Indonesian Army itself was controversial, as it was against civilian supremacy, an essential concept of democratic governance that has become an accepted part of the language of the current senior leaders of the Indonesian Army.

Under military rule, in Indonesia for over five decades and in Burma for over four decades, both countries deteriorated and encountered one serious problem after another. As a result, there were student uprisings in Indonesia in 1998 that led to the transformation of the country into civilian rule. Burma has become one of the least developed countries in the world in spite of the fact that it was rich in the years 1948-62, the period after independence and prior to the military coup.

In addition, the military rule in both countries has resulted in serious human rights violations, including those which amount to crimes against humanity.

The trend throughout the whole of Southeast Asia has been one in which the military groups withdraw from the political arena. This has been the case in Indonesia. Many senior military officers in Indonesia have started to adopt the concept of civilian supremacy. The military in Indonesia has agreed to withdraw all of its representation from the legislature after the 2009 elections. However, the military in Burma is currently attempting to occupy a  $\frac{1}{4}$  of the seats with non-elected military representatives, out of the total number of members of both Houses. This practice is against the democratic principles enshrined in the Universal Declaration of Human Rights and it also denies genuine legitimacy on the basis of the Rule of Law, that is, to rule the country only by elected representatives.

### **The Formation of Regional and State Assemblies**

Election of representatives, two per township is on the basis of population. If this is the case, the ethnic nationalities, including Burman, that constitute the majority of the population in every township, will certainly be elected as the members of the Regional and State Assemblies. Representation of military personnel equal to one third of the number of representatives is considered a denial of the people's right to elect their own representatives.

### **Eligibility**

The SPDC's Principles provide that a person shall not be eligible to stand as a candidate for election to the People's Assembly if he has been convicted by a court of law for a certain crime and is currently serving a prison term. In light of this principle, all political prisoners who have been convicted and served their terms are deprived of their fundamental right to vote and also the right to be elected.

### **Division of Legislative Power**

The SPDC's Principles mention that the legislative power is apportioned, but it does not mention how. The distribution of legislative powers, financial powers, and administrative relations between the center and the States is of great importance when society is divided into multi-ethnics. It is also a fundamental aspect in the design and operation of the constitution. The principles of the division of legislative power do not mention the division of legislative power between the Union Assembly and the State Assemblies. Constitutional form may be one thing, but the operational reality of it is another. Therefore, not only structural features, but also the nature of the political processes becomes important to the understanding of the distribution of power and resources.

The absence of listing the exclusive concurrent powers and residual authority of the Union and State is a deliberate attempt to ensure centralization. Apart from the constitutional distribution of power, the particular powers assigned are not set out. Social affairs, education, health services, social welfare and labor services, maintenance of law and security, local government, agriculture and natural resources are all to be state affairs. The distribution of administrative responsibilities has to be constitutionally mandated on the principle of administrative decentralization. However, the SPDC's principles are vague as to the true nature and functions of each Assembly. They are also silent on the vital question of law making processes.

### **Lack of Principles on Electoral System**

In both chambers, one-fourth of the military representatives are appointed by the Chief of Staff of the defense forces. For the remaining seats of the People Assembly and National Assembly, no electoral system has been provided. Since the independence of Burma, equality has been a challenging issue. The question is how the right to equality can be guaranteed among the ethnic nationalities in accordance with the constitution. It is to be exercised in the formation of all state institutions, namely, the legislature, the executive and the judiciary. In the event that no electoral system is mentioned in the SPDC's Principles, it is quite possible to continue exercising the 'First Past the Post' or Majority system, that is not appropriate to Burma as a multi-ethnic society. Under the 'First Past the Post' system, the Burman majority that clearly outnumber the non-Burman ethnic minorities, will assuredly occupy the majority of seats out of the remaining three-fourth seats in both Chambers. If this is the case, the underlying question on equality among all ethnic nationalities, including Burman, will remain unabated. The constitution is required to comply with a system of proportional representation in order to resolve the equality issue.

In respect of the formation of legislatures, executives and judiciaries in States and Regions, the Constitution is only to establish a framework for the whole Union. It is not required to stipulate detailed provisions for the respective constituent units if the local people's right to self-determination is recognized. For instances, the constituent units, in terms of states or regions or provinces, may decide themselves whether they will have one or two legislative Chambers, how they will create their own administrative units, how they will elect their own local administrative authorities, and etc.

## **PART IV**

### **The Head of State and the Executive Power**

According to the SPDC's principles, the candidate for Presidency should have vision of military affairs, in other words, non-military personnel are disqualified

from becoming President. The requirement of Presidential Candidates to have continuously lived in the country for a minimum of twenty years has been put in to debar Daw Aung San Suu Kyi from holding the post.

### **Comments on presidential system designated by the National Convention**

The constitutional principles have been framed in a way to create a deadlock and to make the constitution unworkable. In such a situation, the military can hold on to power indefinitely. The constitutional principles so far laid down by the National Convention provide that presidential system of government will be established. Accordingly, President will be elected by an electoral college. The three groups which constitute the Presidential Electoral College are as follows:

- (1) The group of elected Assembly Members from the Assembly which is composed of equal number of members from the Regions and the States;
- (2) The group of elected Assembly Members of the Assembly which is composed of members elected on population basis;
- (3) The group of military personnel, who have been submitted by Chief of Staff of the Defense Forces, to serve as assembly members, in the above mentioned two assemblies.

Each group shall elect a Vice-President each either from among the Assembly Members or non-Member. Then, the Presidential Electoral College will elect the President from among the three Vice Presidents. As such, out of these three Vice-Presidents, one will become the President and the others the Vice-Presidents. On account of this, the military personnel representatives will certainly become either the President or, at least, a Vice-President of the State.

Out of the three groups that constitute the Presidential Electoral College, the group of military personnel representatives is solid. In addition, there will also be some numbers of those such as former military or the alliances of the military in two other groups. In this situation, the Presidential Electoral College may elect a former military or a military person still in service as the President.

In most presidential systems, election for the president who is also head of government and exercises the highest executive power is designed to be the most democratic. Direct election with universal suffrage is commonly applied. Presidential election of the Philippines demonstrates the best example for the democratic universal suffrage election for the president. In the United States, where the presidential system has been functioning successfully, the people directly elect the members of the Electoral College. Electoral College members of each State, based on the votes of people, have to cast their ballots for the presidential candidate. Despite the US presidential election is indirect technically, it has a sense of direct election by the people.

Due to the application of an indirect voting system under the SPDC's principles already designated in the National Convention, the people lose their right to cast

their ballot for the presidential candidate whom they like. The people will never know who may possibly take the position of President. The choice will be solely in the hands of the Presidential Electoral College, one third of which are military representatives.

To remedy the undemocratic nature of proposed presidential system, the electoral system for the presidency should be direct election with universal suffrage. However, applying such direct election would create another problem in Burma, that is, inequality among diverse ethnic groups within the country in which Burman ethnic group alone occupies almost 50 % of total population. It is always required to take into account that which system would be less harmful to the equality and unity of ethnic groups. The ethnic Burman votes alone can determine who will be the president of Burma if the direct election with universal suffrage is applied for the president. There are tendencies that the voice and rights of people belong to minority groups will be permanently ignored if the country-wide direct election for presidency is applied.

There will be less opportunity for those of non-Burman ethnic nationality to become President. Those of non-Burman ethnic nationality would become the President only in the event that he is a former senior military officer or one still in active military service.

Proposed presidential system is not only undemocratic, but also harmful to the ethnic equality and unity. The experiences Burma gained during democratic governance of 1948-1962 and the country's ethnic diversity suggest that the parliamentary system of government is less harmful to the ethnic equality and unity. Electoral system of proportional representation for the parliamentary election is considered favorable for the fair representation of smaller ethnic groups and their parties in the parliament. If the executive branch including Prime Minister comes from the parliament, there are more chances for the ethnic groups to become part of government which would not be the case in the presidential government. In addition, in spite of being civilians, they can also become the Prime Minister, as head of the executive, and participate in the government. All these will become reality only when the country exercises the parliamentary system of government, contrary to the presidential system provided by the SPDC's National Convention.

### **Presidential system Vs Parliamentary system**

It is good that Burma's military rulers have made a commitment for the transition to democracy, otherwise known as the Roadmap. It is good because it is an admission on their part that their political system, which they have tried out for nearly five decades, has failed and there is indeed a need for change. It does not matter if it is a motivated attempt to hoodwink the people or if it is called "disciplined democracy". The important fact is that eventually they have to put on the garb of democracy instead of their uniforms. It is an acknowledgement that democracy is invincible and that the junta is not all powerful.

Democracy can be organized in various ways. The two principal alternative models are those of parliamentary and presidential governments. The debate on preference of either alternative has been ongoing for a very long time and has now almost abated. However, in the constitutional principles the military have raked up the debate, a clever way of treading under the path of a pseudo semi presidential system supposed to be an intermediate democratic model. However, the junta with their eyes behind blinkers does not see that the vast majority of contemporary and historical cases of democracy fit either the parliamentary or the presidential type. This new model, outlined in the constitutional principles, is tailor made for General Than Shwe. It is the worst drafted document in constitutional history. It has sought to combine diverse constitutional principles, whose general characteristics are difficult to describe.

### **A Flawed Prescription**

One starting-point for the analysis might be the proposition that some thirty-three Third World countries, but only one in the First or Second, have adopted presidential constitutions. Almost universally these polities have endured disruptive catastrophes, usually in the form of one or more coups d' etat whereby conspiratorial groups of military officers seize power, suspend the constitution, displace elected officials, impose martial law, and promote authoritarian rule: examples are Korea, South Vietnam, Liberia and many Latin American countries. Sometimes an elected President dissolves congress and rules by martial law, as Ferdinand Marcos did in the Philippines. Very exceptionally, a popular revolution terminates a presidential regime, as in Nicaragua. No country following a presidential model, except the USA, has been able to avoid at least one such disruptive experience, in many, the disruptions are frequent.

In contrast, almost two-thirds of Third World countries, which adopted parliamentary constitutions, usually based on the British or French models, have maintained their regimes and avoided the disruptions typical of the all American-type system. This does not mean that they have always been well governed but only that somehow they have been able to avoid military domination. It also means that one-third of these polities have experienced military interventions. No doubt other factors were also important. However, I doubt that cultural peculiarities can explain why some parliamentary regimes survive and others collapse. A more significant factor is the relatively great power of the career bureaucracies, military and civil, in many new states by contrast with the weakness of their institutions for self-government, civil society and political parties.

There are startling differences among the seventy-six Third World countries that have adopted democratic constitutions. Out of thirty-three presidential regimes, not one has survived without serious interruption, whereas two-thirds of the forty-three parliamentary regimes managed to sustain themselves without serious disruption. This analysis covers the period of 1945 to 1985.<sup>6</sup>

### **The Executive**

The SPDC's principles mention that the President is the Chief of State and the executive power is apportioned to three units. It does not explain what is apportioned or whether it is a delegation of power or a division of power, in other words, whether the other units work as agents of the President or not. Regarding the autonomous areas, it says they will be provided for by the constitution, however, details are denied and it does not lay down any principles fundamental to autonomy. (c) Refers to the formation of the Union Government, it will consist of the State President, two Vice Presidents, one Attorney General and Union Ministers. The number of Union Ministers is to be specified by the President, although, the formal approval of Union Assembly is mentioned. The President may just carry on with three Union Ministers and deny other elected members the chance to become Union Ministers. What will happen if the approval of the Union Assembly is not obtained is not mentioned. These ambiguities would make the working of the constitution impractical. (e)(1) States the age limit for becoming a Union Minister must be 40 years. This is aimed at shutting out the youth. 2(a)(2) states that for the defense, security/home and border affairs, the Union Ministers shall become the military. This nominated list of Union Ministers shall be submitted to the Union Assembly for approval. Practically, the Union Assembly has no right to reject candidates for the position of Union Minister because it says that only upon clear proof can a Union Minister be disqualified. The judge will be the President of course and what is clear proof is for him to determine. All the Union Ministers shall be responsible to the State President.

The problem, however, is that the Caesarean presidential system impedes the normal development of a free democracy. The abnormal concentration of power inevitably invites corruption and other irregularities. As a matter of course, all past Presidents of Korea and their associates were plagued by scandals and even faced criminal charges toward the end of their tenures. "The most formidable challenge is whether or not the President can display strong leadership without the backing of a political party and the National Assembly".<sup>7</sup>

### **The Attorney General**

His status is that of a Union Minister and he is also a member of the Union government, but his impeachment is like that of the State President, he can be sacked by the President without the approval of the Union government or People's Assembly. This provision entrenches the power of the President.

The principle in parliamentary democracy is for the People's Assembly to elect the Prime Minister who then draws the list of Union Ministers and submits it for the formal approval of the President. But in this case, the contrary has occurred. It is unclear as to whether the responsibility of the Minister is to the people or the People's Assembly.

The SPDC's Principles have laid down a presidential system with intriguing features. The President is the constitutional Head; there is not even a provision for a Prime Minister or a Council of Ministers headed by the Prime Minister. A distinguishing feature of parliamentary form of government is that the Council of Ministers is the real Executive and enjoys real power, but it is accountable to the parliament, that is to the people because it is the people who have elected them. This is an essential condition of representative democracy; a no confidence motion can remove them. In the principles the President is not accountable, yet, the Ministers are accountable to the President, not to the Parliament. The President is not directly elected by the people, but indirectly by the Electoral College which is constituted out of the Union Assembly composed partly of non-elected members. It means that if a President is a military person, he can influence and control the legislature and there will no separation of power. In this system, the President may not be a member of the majority party in the legislature. The Ministers are subordinate to the President. The President will become dictatorial.

The presidential system is not suitable for a country where a multi-party system has been declared as its objective and where society is divided into ethnic nationalities with the present of one nationality in overwhelming majority. The peculiar and specific conditions of the country, and the centralized military dictatorship of the past, needs a system which will lead to conflict resolution. A constitution, which gives decision-making powers to the grassroots and promotes the emergence of good governance, is the need of the hour. A constitution full of ambiguities, loopholes for manipulation and subject to deadlocks and constitutional crisis is far from what Burma needs today. The "principles" have revealed a unique case of a President entering through the back door and usurping the seat of power. The Principles are an unprincipled strategy to give legitimacy to the present regime with the clothing of inclusiveness. The exercise reveals a shocking lack of awareness of basic historical facts and the need of our polity.

### **The Power of the Army**

Impeachment of the President requires one fourth of the total membership of any one of the two Assemblies. This means that the army always has the weapon to intimidate the governers of the country. The Chief of Defense Service is not under the President. The President is also not Commander in Chief. The military has given a tremendous weapon to ward off any political interference.

### **Administration**

The SPDC's principles permit the center to infringe upon State rights. The center can deploy its forces in any of the States and retain control over the armed forces. The States can be under the occupation forces of the center at any time.

The President is the Head of the State. The administrative power between States

and Units will be divided in accordance with the constitution. However, the principles does not say anything about how division will be made. On the contrary, Item (h) (3) reads “The military personnel whose names have been submitted by the Chief of Staff of the Defense Forces for the purpose of undertaking the security or border affairs responsibilities shall compose in Administration at Union, Region, State, Autonomous Territories and Division”.

This means that the effective administration of the country will be in the hands of the military. The National Assembly and the People’s Assembly will turn into a mockery. Furthermore, if this is read along with item (j), it will be found that the real agenda of the military is to dominate the country. It reads:

“(j) Concerning the Tatmadaw

- (1) Tatmadaw is the only strong and modern army.
- (2) Tatmadaw has authority to manage all military affairs independently.
- (3) The Chief of Staff of the Defense Forces is the head of all armed forces.
- (4) Tatmadaw has authority to deal with the entire public in matters of security and defense of State.
- (5) Tatmadaw is primarily responsible to safeguard non-disintegration of the Union, non-disintegration of the National Unity and Stability of sovereignty.
- (6) Tatmadaw is mainly responsible to defend the Constitution.”

## **PART V**

### **The Justice System and the Judiciary**

For the justice system of any society to function properly, the judiciary must play a crucial role. The successful functioning of the judiciary can only become a reality when the judiciary is independent from the intervention of the executive. This is the accepted norm that has been exercised for a long time by most democratic countries. The 1947 Constitution of Burma also implemented the concept of independence of the Judiciary. In 1985, the UN General Assembly adopted a resolution on the Basic Principles of the Independence of the Judiciary. They were formulated to assist Member States in the task of securing and promoting the Independence of the Judiciary. According to the principles, the Judiciary shall be highly respected by the government within the framework of the respective national legal system. The independence of the Judiciary shall be guaranteed and enshrined in the constitution. This should be in line with the aforementioned UN principles, through the exercising of the separation of power, mainly between the executive and the judiciary. However, The SPDC’s Principles make no mention of the independence of the judiciary, as had been exercised within the Burmese national legal system after independence and as enumerated in international standards.

It mentions about the independence of the Chief of Justice and the Justices of the Supreme Court of the Union from party politics. The meaning of independence in the UN Principles on Judiciary is very broad and in that sense not restricted. Moreover, independence covers the entire judiciary. In the administration of justice, the various levels of courts are required to adjudicate the cases impartially and independently from governmental authorities and their local influential cronies. To this end, judicial tenure needs to be protected and the appointment and impeachment of judges should be prescribed in the constitution in line with the UN Principles on Judiciary. Under freedom of expression and association, the UN Principles on Judiciary recognize that the judges are free to form and join associations of judges to promote their professional training and protect judicial independence. Unfortunately, the SPDC's Principles are keeping silent on that matter.

All countries should be able to guarantee their citizens a fair and independent court system. The courts should be able to make fair decisions, according to the laws of the country, without interference or influence from any outside party, especially from the government. Every person must have the right to be tried by a fair jury and the decision of the court must not be changed or ignored by the government. Judges must be well-trained, qualified people who are chosen by an independent body, free from the influence of the executive. This should be enshrined in the constitution, however, this is not the case in the following SPDC's principles.

### **Appointment and Impeachment of Judges**

- (1) The State President shall appoint the Chief Justice of the Union, with the approval of the Union Assembly.
- (2) The Union Assembly shall not have the right to reject candidate for Chief Justice of the Union, submitted by the State President, unless there is concrete evidence to prove that the candidate fails to possess qualifications specified by the Constitution for Chief Justice of the Union.

Accordingly, the State President enjoys a very powerful influence in the appointment of the Chief of Justice. Even the Union Assembly cannot reject candidates for any reason except the lack of qualifications. This means that the State President can choose anybody who will be subservient to him only on the general condition that the candidate is legally qualified.

In regards to the appointment of the Chief of Justice, the 1947 Constitution of Burma provided that the Chief of Justice shall be appointed by the President, in consultation with the Prime Minister and with the approval of both Chambers of the Parliament in joint sitting. The difference is that under the 1947 Constitution the President did not have the executive power; instead the Prime Minister was

the primary executive. The members of Parliament enjoyed free debate and discussion about the candidates for the position of Chief of Justice. They could also reject candidates proposed by the President. However, under the SPDC's Principles, the President is the primary executive. He is the sole authorized person to select candidates for the position of Chief of Justice, whom not even the Union Assembly can then reject.

The SPDC's principles have made the judiciary subordinate to the President. All appointments of judges, from the Chief of Justice of the Supreme Court downward, are made by the President. Although there is mention of approval by the respective region or state assembly, it also says that the Union Assembly shall not have the right to reject a candidate unless there is concrete evidence to prove that the candidate does not have the required qualifications. What qualifies as "concrete evidence", the President will decide. Even in the case of a rejection, the President shall have the right to submit a new candidate. In a parliamentary system the advice and consent of the Ministers is necessary for the appointment of other judges to the Supreme Court. The advice and approval of the Chief of Justice is necessary. For the appointment of lower court judges, the advice of high court judges is necessary. Here, we see that the President makes all appointments and only a formal approval is taken from the Union Assembly.

The President's power of removal is also an impeding factor. The SPDC's Principles provide that the President may impeach the Chief of Justice and a Justice of the Supreme Court of the Union. In a parliamentary democracy, an impeachment motion can only be initiated in the People's Assembly. Here, this power is conferred upon the President; therefore, the judiciary is under the constant threat of the Executive. In respect of judicial tenure, there is no provision in the SPDC Principles. The empowerment of the President to exercise power on appointment and the impeachment of judges will create a situation that endorses the executive being above the judiciary, which will result in the collapse of the independence of the judiciary.

Judges themselves are not above the law. A system should be created in the constitution to allow for complains against judges who are not doing their jobs fairly. There must be a way of investigating and, if necessary, disciplining or removing bad judges. However, the government should not have the power to impeach the Chief of Justice or the Justices of the Supreme Court.

### **Subservience of Judges**

The judiciary is one of the most important organs of the government; it not only applies the existing law to individual cases but it also interprets law. As such, it is the guardian of the citizens. Lord Bryce stated "there is no better test of excellence of a government than the efficiency of its judicial system". The success of democracy and good governance depends on the impartial and independent nature

of the justice system and the rule of law. This can become a reality only when universally accepted basic principles on the independence of the judiciary are exercised. The 1947 Constitution of Burma reflected that principle in the following provision:

Every person appointed a judge of the Supreme Court and of the High Court under this Constitution shall make and subscribe the following declaration:

“I ----- do solemnly and sincerely promise and declare that I will duly and faithfully to the best of my knowledge and ability execute the office of the Chief Justice without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws.”

Pursuant to the aforementioned provision, the judges were subject only to the constitution and laws. This is also in line with the UN Principles on the Independence of the Judiciary. Unfortunately, the SPDC's Principles do not lay down any foundations for the Independence of the Judiciary.

### **The Protection of Individual Freedoms by the Judiciary**

Under the heading 'judiciary', the basic principles are laid down in five points. Item 3 states the Supreme Court has been given the power of issuing writs. The writs should be clearly stated as writs of habeas corpus, mandamus, prohibition, quo warranto and Certiorari as provided for in the 1947 Constitution.

In attempting to produce a constitution at the present time, the past experiences of the people are to be taken into account. The constitutional principles should lay down a foundation for the protection of individual freedoms, with reference to previous atrocities that the society encountered, so that the sufferings of the people do not repeatedly occur in the future society. For instance, under the rule of the successive military juntas, arbitrary detention against innocent individuals has commonly taken place throughout the country over a long period of time. As such, in order to protect these basic freedoms of the people for the future, the constitution must create reliable institutions, one of which, most importantly must be the Judiciary. The Judiciary should have effective powers, including habeas corpus, a court order, known as a writ in legal terms, to release a prisoner being held in custody. According to this principle, a person could come forward before the Supreme Court and apply for Habeas Corpus by executive or administrative order for a family member or friend under illegal detention.<sup>8</sup> After this application, the Supreme Court would issue Habeas Corpus directing the arresting officials to bring the detained suspect before the court to examine the legality of the executive order. If the detention was illegal, the arresting officials had to release the detained suspects right away as per the direction of Habeas Corpus.

### **Distribution of State Judicial Power**

The SPDC principles mention that State judicial power is distributed. This is ambiguous and does not say anything about the disputes between Union and constituent units. The Constitutional Tribunal, although mentioned, finds no place in the scheme of the judiciary. It doesn't say whether the Supreme Court is an appellate court or just a federal court. It also does not make constitutional provisions to make the Supreme Court a guardian of the constitution. As framed, the Supreme Court cannot determine justifiable actions, in other words, it cannot entertain constitutional writs. It also cannot invalidate laws passed by the Union Assembly. A remedy for violations of human rights is totally absent and the Supreme Court or the Constitutional Tribunal has been given jurisdiction. It does not say whether the Union has control over the High Courts, which is Head of the State Judiciary, and there is no provision for jurisdiction over administrative tribunals or infringement of the rights of the servicemen. In short, the Supreme Court has been robbed of the power of judicial review, thereby reducing the judiciary to the present status, which it has currently under the SPDC.

In order to become a Chief of Justice or one of the Justices of the Supreme Court, the candidate must have the qualification of 20 years practice as an advocate. This is not found anywhere in the world, with ten years being the ordinary qualification. 3(e) says the Chief of Justice and Justices cannot be members of political parties. That is not enough, as they should also not be political supporters. They must be totally independent from party politics and military leaders. Item 8 states that duties, powers and rights of the Justices shall be regulated by law. It is necessary that certain fundamental provisions be made in the constitution itself concerning these rights. All the Justices of the Supreme Court shall have the status of Vice Presidents and not Union Ministers. It will appoint its own administrative staff and frame rules for service people.

## **PART VI**

### **Fundamental Human Rights and Freedoms**

As a member of the international community, Burma has an international responsibility to uphold and promote human rights. However, in its attempts to draw up a new constitution, the SPDC has failed to implement it to strive towards the protection of fundamental freedoms and basic rights within its constitutional principles.

#### **Individual Rights**

##### **The right not to be arbitrarily detained and to enjoy a Fair Trial**

This right, embodied in Article 9, of the ICCPR, protects persons from arbitrary arrest and detention and protects the right to:

“...be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time”.<sup>9</sup>

Furthermore, detainees have the right to “take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention”.<sup>10</sup> This is reaffirmed in Article 9, of the UDHR.<sup>11</sup> Despite Burma’s failure to ratify the ICCPR, it cannot deny its obligations as a member of the international community and as a member of the UN. The failure to include such crucial safeguards to ensure habeas corpus demonstrates a failure to meet minimum international standards, as adopted by the General Assembly in the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). The right to obtain a writ of habeas corpus secures the right to be brought before a court as protection against illegal imprisonment. This civil right ensures a citizen’s right to know why they are imprisoned and protects the right to personal liberty.

Arbitrary detention for expressing anti-government opinions, for being suspected of holding anti-government opinions, or for demonstrating or associating with political opposition groups is not uncommon in Burma. Therefore, the failure to incorporate measures protecting citizens from unlawful detention within the SPDC’s constitutional principles is significant and can be seen as a willful act of neglect. With no provision for the protection of the citizens against this kind of abuse and no assurance of cases being heard within a reasonable time frame by an impartial judiciary, it is likely detentions of an arbitrary nature will continue to occur.<sup>12</sup> The SPDC’s constitutional principles give no assurances of the right to a fair trial.<sup>13</sup>

### **Freedom of Expression**

In spite of provisions in international human rights laws, the right to freedom of expression is not prescribed in the SPDC’s constitutional principles. Currently, any form of freedom of expression in Burma is strictly controlled and censored by the SPDC. Those who participate in forms of expression inconsistent with the government’s policies face severe reprisals, often imprisonment. These restrictions have a devastating effect on the press and other forms of media, communication via email, telephone and fax, musical expression and expression through the visual arts.

### **Freedom of Association**

Freedom of association can be seen as an individual right or a collective right. Article 8, of the ICESCR<sup>14</sup> guarantees “the right of everyone to form trade unions and join the trade union of his choice”<sup>15</sup> and for these trade unions to “function freely subject to no limitations other than those prescribed by law”.<sup>16</sup>

The SPDC's constitutional principles are silent on the right to freedom of association, giving license to the military to continue to suppress and undermine this basic human right. The denial of this right can be seen as another method of preventing any anti-government associations or political opposition groups from gaining support and causing unrest. The ongoing suppression of political groups in Burma, often leading to the torture and imprisonment of their members, is something that must be eliminated if Burma is to develop into a country, which upholds democratic principles. The future constitution of Burma needs to guarantee political opposition groups can exist freely without fear of reprisals.

### **Freedom of Assembly**

Article 20, of the UDHR states that everyone has the right to freedom of peaceful assembly and association. The ICCPR also states restrictions may only be placed on this right in accordance with law "in the interests of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others".<sup>17</sup> The SPDC's constitutional principles fall silent on the right to freedom of assembly, giving them a gateway to engage in the forceful suppression of any assembly they have an interest in stopping, whether in accordance with law or not. This will result in the denial of the people of Burma to partake in peaceful protests and express their views.

### **The Right to Privacy**

There is no protection within the SPDC's constitutional principles for the protection of privacy and unlawful interference on family, home, correspondence or attacks on reputation and honor, leaving those in power free to engage in personal attacks upon whomever they wish.<sup>18</sup>

### **Prohibition of Forced Labor**

Protection from slavery has acquired recognition as an obligation erga omnes and is considered to be customary international law. Freedom from slavery is embodied in numerous international and regional instruments, such as the 1957 Convention on the Abolition of Forced Labor and others.<sup>19</sup>

It is well documented that the SPDC continues to conduct widespread policies of forced labor, mainly on infrastructure projects, porting for military operations and road and building maintenance throughout Burma.<sup>20</sup> This continues to have a devastating effect on people's livelihood and their ability to provide and care for their families. Forced labor, especially as a means of political coercion or economic development, is a fundamental right which must be safeguarded against, therefore, it is essential any future constitution for Burma protects the people against such abuses.

The failure of the SPDC to provide such a safeguard leaves the people of Burma

open to further abuses of this nature in the future. It gives the SPDC leadway in engaging in their policies of forced labor, despite the fact they are breaching customary international law and are running the risk of being held accountable for their actions by the international community.<sup>21</sup>

### **The Right to Own Property**

The right to ownership of property is not guaranteed under the current military regime in Burma. Destruction of property and forced relocations continue to be amongst the extensive list of abuses committed by the junta. Violations perpetrated by SPDC soldiers continue to go uncompensated, such as the looting and destruction of property, trespassing and breaking and entering, which frequently occur during forced relocations. Despite wide recognition of these oppressive policies, the SPDC has continued to carry out forced resettlements for a number of years. The motivation behind these measures is attributed to the military's pursuance of economic development or attempts to increase control over areas effected by insurgency.

Typical examples of relocations are whole villages being forced to relocate to urban and rural areas, some of which have become known as "beautification" projects aimed at promoting tourism, others to make way for infrastructure programs or military bases, or the moving of whole villages in order to secure conflict zones and to cut off support and supplies for the opposition.

It is particularly relevant to the Burma situation that a future constitution should protect the people's right to property and protect property from being unlawfully confiscated or damaged. It is also of essential importance that the right to compensation is upheld should relocation be deemed necessary in accordance with law. If the future constitution fails to include these provisions, abusive policies of large-scale forced relocations are likely to continue. It is of great concern that the SPDC has failed to incorporate any of these necessary precautions in their constitutional principles.

### **The Right to Establish Private Schools**

The right to establish private schools is embodied in the ICESCR.<sup>22</sup> Normally, a State's constitutional principles would uphold this right to establish private schools, however, it is no surprise that the SPDC has failed to incorporate educational matters whatsoever in its constitutional principles, leaving the education of the population at the mercy of the State.

The lack of provisions for safeguarding educational rights within the constitutional principles is a cause for alarm, especially considering the SPDC's notorious reputation for the suppression of educational institutes and the significant limitations they have determined on the subjects available for academic study. Placements at the schools with the best reputations, scholarships and opportunities

to study abroad are reserved for the elite, especially those with military connections. In its attempts to counteract the threats posed by students to the military's survival, the SPDC has engaged in policies aimed at the systematic suppression of students and teachers in order to prevent any unsavory disruption or unrest which may contribute towards the loosening of the SPDC's grip on power, notably the closing of most educational institutions following demonstrations in 1996.

Despite the re-opening of some institutes, in July 2000, there has been ongoing disruption to education. Many students can't access education as numerous institutions have been moved to remote areas, campus accommodation has been closed and courses remain limited and very expensive, making entry very difficult for the ordinary population. It is for these reasons and the low quality of education available in Burma that the Burmese would like the right to establish private educational institutes in order to improve the quality of education and have the flexibility to broaden the subject areas available for study.

## **Collective Rights**

### **The Right to Self-Determination**

The principle of "equal rights and self-determination of peoples'" is explicitly mentioned in the UN Charter in article 1(2) and article 55.<sup>23</sup> These provisions are somewhat vague and do not clarify the legal consequences of self-determination, making it doubtful whether these provisions alone create any legal obligation at all. However, the right is also embodied in Common Article 1, of the two Covenants, the ICCPR and the ICESCR.

The right to self-determination of non-self governing territories<sup>24</sup>, mandated territories<sup>25</sup>, or trust territories<sup>26</sup> is recognized and clearly established by state practice as a basic principle of international law, to which even the status of *jus cogens* is attributed. However, the application of the right to self-determination to territories that do not fit within the character of non-self governing territories, trust territories or mandated territories, like that of Burma, is somewhat more uncertain.

Although the principle is recognized as a fundamental right, the development of the right to self-determination has not given rise to a general legality of secession as a consequence of the principle. This was clarified in 1970, when the General Assembly declared that the principle of self-determination didn't include: "Any action that would dismember...independent States conducting themselves in compliance with the principle of...self-determination of peoples"<sup>27</sup>

Article 1, of the two Covenants, which states the right may be continuously exercised by 'all peoples', can be interpreted as the right to some form of autonomy within the already established state structure, such as the right to determine political status and to pursue cultural, economic and social development.

This is supported by article 27, of the ICCPR, which provides limited rights of minorities 'to enjoy their own culture, to profess and practice their own religion, or to use their own language'. The guarantee of the right to self-determination, excluding the right to succession, is especially important in a country as ethnically diverse as Burma.

### **Minority Rights**

Article 27, of the ICCPR provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practice their own religion, or to use their own language.

This provision has been built around general rules of non-discrimination, and the rights are formulated as individual rights, i.e. rights of the members belonging to a minority, not as a collective right, yet, there has been a tendency in recent times to move towards a more group-orientated view. Minority Rights have been embodied more specifically in the 1992 UN Declaration on Minorities.<sup>28</sup> Although these documents grant rights to minorities, the territorial integrity of the State is emphasized.<sup>29</sup>

The failure to protect these rights, embodied in Article 27, of the ICCPR, within the SPDC's constitutional principles, gives the SPDC license to persistently deny and ignore political and social equality of ethnic minorities and the opportunity to suppress these groups right to retain their cultural identity. The People's Assembly, National Assembly and the State and Regional Assemblies are all guaranteed to be dominated by the military and its supporters and there are no assurances whether the governments of each State and Region will have any legislative or administrative powers. The failure to clarify many details and give any assurances of equal political participation for those of ethnic nationality leaves us to assume these rights will not be guaranteed under the proposed Constitution.

Burma consists of several different ethnic minorities, some of which have been engaged in long-term warfare against the government, therefore, such leadway for repression within a constitution is unacceptable and inconsistent with international human rights standards. The failure to include provisions guaranteeing minority rights can be interpreted as an indication that the SPDC has no intention of risking the wavering of their position in order to ensure these rights.

### **Note on Humanitarian Law**

Humanitarian law regulates the laws on going to war, *jus ad bellum*, and regulates the conduct of parties during war, *jus in bello*. The most widely known embodiment of humanitarian law is the four 1949 Geneva Conventions, of which ratification is virtually universal. The Geneva Conventions and the two 1977

Additional Protocols lay down basic principles to provide minimum standards of humanity during warfare that must not be violated, regardless of whether a State is party to the Conventions or not. These basic principles include the principle of distinction between military and civilians,<sup>30</sup> the principle of proportionality,<sup>31</sup> the prohibition of unnecessary suffering<sup>32</sup> and the protection of persons not taking part in the hostilities.<sup>33</sup>

Respect for international humanitarian law is particularly significant to Burma, which has been waging a civil war against its ethnic minorities for nearly five decades. Common Article 3, of the Geneva Conventions has the status of customary international law has been recognized as a “fundamental general provision of humanitarian law”,<sup>34</sup> therefore, it is binding upon all States regardless of whether they have ratified the Conventions or not. Parties to the Conventions are under an obligation to enact legislation penalizing breaches and to punish those who violate these regulations, they are also under obligation to disseminate the provisions to the armed forces. The SPDC’s constitutional principles are void of any mention of an obligation to respect and implement these principles governing warfare. Therefore, there are no safeguards in place for the repression of abuses and infractions that are likely to occur when a State is engaged in warfare, nor any provisions to respect the special position of the International Committee of the Red Cross.

### **CEDAW & CRC**

The SPDC has failed to ensure measures to uphold their treaty obligations under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1989 Convention on the Right of the Child (CRC) within the constitutional principles.

Since the ratification of these two treaties, Burma has done little to implement the tenets of either Convention. This contravenes the principle that each State must take the necessary steps at the domestic level to give effect to the treaties they ratify or the effective implementation of the treaty will be undermined.<sup>35</sup> Clearly, the SPDC’s constitutional principles are not compatible with Burma’s obligations under the CRC and CEDAW as they fail to uphold the basic principles of each treaty. This failure to include provisions that will secure Burma’s commitment to meeting her obligations under these treaties may become a basis for which the principles should be rejected.

The protection of children is particularly fundamental in a society that is documented as one of the world’s largest users of child soldiers.<sup>36</sup> Both the SPDC’s military and armed opposition groups have been documented as using child soldiers in their activities. Some are serving voluntarily, while others are forced to enlist. Despite which category they fall into, many are under 18 years old. There are several factors contributing to the perpetuation of the recruitment of child soldiers

in Burma, namely the lack of educational opportunities, widespread internal displacement, economic difficulties and ongoing civil war. Those who become child soldiers “often serve as human mine detectors, participate in suicide missions, carry supplies, act as spies, messengers or lookouts, and often, are thrown into direct combat”.<sup>37</sup>

The CRC, which Burma became a party to in July 1991, specifically requires those who are party to the Convention to “...refrain from recruiting any person who has not attained the age of fifteen years into their armed forces”.<sup>38</sup> They are also under obligation to “...take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take part in direct hostilities”.<sup>39</sup> Despite these obligations under international law<sup>40</sup> and Burma’s own Defense Services Act,<sup>41</sup> it is evident that Burma is failing to uphold these requirements and, therefore, undermining the effective implementation of the Convention.<sup>42</sup>

Despite the ratification of CEDAW nearly seven years ago, Burma has taken very few steps to implement its provisions. Women in Burma still suffer inequality in access to education,<sup>43</sup> inadequate health care and poor access to family planning methods.<sup>44</sup> Women continue to endure human rights violations, primarily sexual violence, rape, trafficking,<sup>45</sup> forced labor and forced relocations, alongside the continued repression of economic and political rights.<sup>46</sup> The silence of the constitutional principles on these important issues, particularly relevant to the situation in Burma, demonstrates a complete disregard for their treaty obligations under CEDAW.

## Conclusion

It is clear from this brief analysis, that the SPDC’s constitutional principles are inconsistent with international human rights norms and Burma’s treaty obligations and should, therefore, on this basis be rejected. To put these principles into effect, would not only severely oppress the rights and fundamental freedoms of the people of Burma, but would also affect the fundamental interests of the international community as a whole and thus the rights of all States.<sup>47</sup> It is Burma’s international responsibility to uphold the rights of those within its jurisdiction, therefore, the people of Burma are entitled to guarantees of the non-repetition of previous violations against human rights committed by the SPDC. To remain silent on the matter of human rights appears to be a willful act of omission and outstanding negligence. The constitutional principles fall so far short of international standards that it is not difficult to recognize their insufficiency.

It is apparent that the SPDC’s primary objective and motivation in its drafting of these principles is to ensure its grip on power and control over the people. If a constitution fails to protect its citizen’s basic rights, there will be no safeguards against abuse and interference by the government. One of the main purposes of having a constitution is to place limits upon State power, yet, the constitutional

principles distinctly reflect the SPDC's decision to put their own considerations above the needs and desires of the people and their right to exercise basic freedoms. In forming their policies, they appear to have, firstly secured their own interests, and only secondly, given some minimal consideration to the peoples' interests.

## **PART VII**

### **Self-determination and Autonomy of the State**

Self-determination is a controversial political term that cannot be defined accurately as to whether it encompasses secession or not. In spite of that, the majority of ethnic armed organizations and a large number of non-Burman ethnic leaders have been struggling for the achievement of self-determination, to be exercised within the framework of a Federal Union. Accordingly, in order for the member states to exercise self-determination, as constituent units, the principles are required to manifestly mention the division of power between the centre and the states or provincial legislatures.

The principles do not make any provision for the distribution of legislative and executive powers between the Union and the constituent Units. There is no list of powers which the Union can exercise, nor a list of the powers the Units can exercise. There is no provision as to the powers of the States, which the Union cannot invade. The financial powers of the Units have also not been set out. In respect of the allocation of revenues, there has to be democratic accountability and the supply of revenue to poor governments to achieve uniform living standards should be encouraged. The constitutional principles are required to mention administrative relations between the Union and the States. In addition, there should be provisions against centralized tyranny by the majority; however, the SPDC's principles are keeping silent on this matter.

For Burma to make the transition from the rule of dictatorship to democracy, rigid centralization must be given up and decentralization implemented from the centre outwards. To this end, the constitution must guarantee not only self-determination for the constituent units, but also autonomy for local areas and local governments within each and every constituent unit, as an exercise of decentralization. In this regard, the SPDC has not laid down any clear principles. However, they have sufficiently indicated that rigid centralization will be exercised in accordance with the future constitution. This is nothing new, the SPDC have been practicing rigid centralization for the previous fifteen years without any constitution.

They have given only the structure of arrangement, but how this structure is to be governed is not stated. Powers will devolve only from the top and at the description of the top. In the 1947 Constitution there was at least the division of power and

three lists; the Union list, the State list and the concurrent list. If the basic principles do not give directions to the constitution framers as to the principles of power sharing, then the constitution framers are bound to go for a Unitary State resulting in the denial of self-determination and autonomy of the respective states. The scheme of running the government as discussed below will confirm the contention above.

### **State Government**

Pursuant to the SPDC's principles, the Chief Minister shall be appointed by the State President from among the members of the State Assembly and obtain their approval. They have no right to reject him except on grounds of concrete evidence that would disqualify the candidate. When the approval of the State Assembly is not given, the State President shall have the right to submit a new name to the State Assembly. If the State Assembly disapproves yet again, there is no provision as to what will happen.

The State Chief Minister shall appoint Ministers from the military for security and border affairs. The Chief Minister has to submit this list for the approval of the State Assembly that has no right to reject or disqualify except on grounds of concrete evidence. There is no mention what would happen if approval is not given. The final appointment of the State Ministers rests on the President. The Chief Minister and the State Ministers shall be responsible to the President. Appointment of State legal officers must also get Presidential approval even though approval has already been given by the State Assembly and the Chief Minister. The principles are unclear as to how the center and the states are to coordinate their legislative activities.

### **Autonomous Division**

The SPDC's principles mention that the supervisory bodies will exercise legislative power but no principles have been laid down and an omnibus clause to be regulated by the constitution is mentioned. The military personnel can also be in the supervisory bodies.

### **Designation of Union Territories**

The SPDC designates Rangoon, the capital, as Union Territory. Accordingly, it will be under the direct administration of the State President in spite of the fact that the existence of the legislature and the formation of the executive have not been stated in his or her administration.

The SPDC's principles state that the President shall establish Rangoon's City Council. The number of members shall be decided by him, including the chairman

The Council shall include military personnel for security and retirement from the military shall not be a requirement. The Council Chairman or any member shall not belong to a political party. The status of the Council Chairman is equivalent to that of a Union Minister. The entire Rangoon City Union Territory, the most strategic center of the country, will be fully dominated by the military. If the President wishes, he can nominate ALL THE COUNCIL MEMBERS FROM THE MILITARY. He cannot remove any of the military personnel without the approval of the Defense Chief.

### **Administration at Ward or Village Tract Level**

For administration at ward or village tract level, appointment shall be according to law; in other words, no constitutional rights have been granted at the village level.

In the uniting of the State, it mentions about the Autonomous Zone but it does not say what this is. Only territorial descriptions of village, town, and district groupings have been stated without anything on their local self-government or focus of power.

### **Ethnic**

The basic Principles under Item (12) state as follows:

“ Concerning Ethnics

- (1) The State will help ethnics in development of their language, literature, art and culture.
- (2) The State will help to develop the solidarity, fraternity and cooperation between ethnics
- (3) The State will help development of less developed ethnics in respect of socioeconomic growth including education, health, economy and communication”

It talks about language rights, culture rights, education rights and unity but nothing about self-determination, autonomy, statehood or state constitution. The SPDC's principles have lamentably failed to address the core issues plaguing the country. These three matters, promised in the basic principles, will never be fulfilled unless the ethnics nationalities are given self-determination to design their own governance within the framework of a Federal Union.

### **The Language Issue**

Language is the carrier of culture. In the past, the study and promotion of ethnic languages in schools has either been denied or has been negatively discouraged. As such, the constitutional principles should remedy this injustice. In spite of this, the principles are completely silent on the issue as the SPDC wish to impose

the language of the majority on all ethnic nationalities. There is also urging on its part to suppress the languages of the ethnic nationalities, as the it is doing presently. These are other ways of perpetuating centralism and entrenching authoritarianism.

### **Federalism**

The constitutional principles should specify that States, as constituent units, have the power to sanction their own constitutions and to organize their political institutions. To be valid they must respect and be within the Union constitution. State autonomy will contribute to the promotion of democracy and conflict resolution, which have been key aspects in the history of Burma. The concept of State security first, and democracy later, is the legacy of the colonialists. Healthy democracy can never jeopardize security. On the contrary, it brings stability and sustenance to the political system.

In the complex enterprise of good governance, fiscal equalization, ethnic and linguistic diversity, and inter-governmental relations are some of the main problems. The constitution must address these concerns and challenges. The SPDC's principles have been designed to resist democratization with an elite concept of the military as a diversionary tactic to come back to power. The Principles must take up the leading challenge of accommodating diversity and design in negotiated governance arrangements.

The 1947 Constitution failed to provide details of the Center-State relationship. To this end, the Center has to exercise proper centralization while self-determination is being practiced by member states. Nevertheless, in the name of keeping the country united, fraternal relations between the Center and the States were sacrificed. Problems of violent movements for autonomy and self-determination became frustrating. The 1974 Constitution, designed by General Ne Win, as the head of the military, collapsed because of its total denial of democracy. The framers of the Principles should have taken note of the lessons of history. The manifold dimensions of social-cultural diversities of the pluralistic society should have suggested that the only solution is a federal polity.

“Now when we build our new Burma, shall we build it as a Union or as a Unitary State? Aung San, Burma's national hero for independence, asked at the AFPFL Convention in May 1947. This is when the basic principles of the constitution were formulated and the first draft was approved. ‘In my opinion,’ he answered, ‘it will not be feasible to set up a Unitary State. We must set up a Union with properly regulated provisions to safeguard the rights of the national minorities. But we must take care that ‘United we stand’ and not ‘United we fall’.”<sup>48</sup>

## **PART VIII**

### **Civil Society**

We define civil society as the community of civil associations, that are non-governmental, that provide the network for civil engagement within which reciprocity is learned and enforced; thus, trust is generated, and communication and patterns of collective action are facilitated. It also enables communities to develop self-reliance and to help each other develop their social and economic life.

One of the most telling definitions of civil society is that, "Civil society is a dense network of associations working openly in a democratic society and having the ability to reach the decision-maker in order to influence events". A civil society will consist of a mixture of various forms of associations that will freely interact and communicate with each other in a spirit of civility and tolerance for the sake of the entire population. Societal pluralism i.e. the ability of all groups to work freely, openly and equally without violating the rights of others, is one of the underlying concepts of civil society. Here, it is important to note that a civil society, which extols the idea of democracy, does not allow one civil group to act selfishly for their own goal without regard to the others.

Since 1962, Burma's military junta has monopolized both the economic and educational systems to consolidate their military rule over Burma. The bureaucracy can only be described as an arm of the military, with no semblance of an independent public service. Military and ex-military personnel have exercised legislative, executive and judicial powers; they decide everything; only the relatives and friends of the military elite can attain higher education, enjoy better employment, obtain licenses and concessions; and earn uncountable amounts of income. As the independent people's organizations and the NGOs, including an independent Media that is an essential constituent part of civil society, have ceased to exist, the people have become too weak to act as an organized counterweight to the abuses of or extent of the state apparatus.

The military's control has also permeated all aspects of community life affecting everyone, everywhere in the country. Local administrative committees dominate village life with only those trusted by the military being appointed to key positions. In Burma, even having guests stay overnight was and still is a matter of state control.

These circumstances can only be reversed with the reemergence of civil society. Civil society monitors the functions of various levels of governmental authorities

and creates a balance of power within the society to maintain social harmony. However, this can never become a reality under the SPDC's constitutional principles as they primarily deprive three basic freedoms of the people – the right to freedom of speech, association and assembly, as mentioned in the previous chapter. Under the SPDC's principles, civil society will not be able to emerge when the administration of the State President is exercised with such rigid centralization and the judiciary is not independent, but instead subservient only to the State President.

Although the multi-party system has been given recognition, it has not been made part of the political system. This will be clear if a comparison is drawn from the 1974 Constitution, which enshrined the one party system.

The political parties, civil society organizations and other law enforcing agencies are not enough to maintain a healthy society where transparency, accountability and good governance are exercised. The creation of independent governmental institutions such as a National Human Rights Commission, a Public Service Commission, a National Counter Corruption Commission, a Press Council, a Women Affairs Commission, an Ethnic Affairs Commission, a Finance Commission etc. within the constitutional framework has become important in modern societies. These institutions create a balance of power and operate as a system of check and balance.

## **Part IX**

### **Conclusions and Recommendations**

In order to produce a proper constitution of a country for future, it is required to address not only current problems but also previous historical experiences. For the case of Burma, most importantly the principles laid down at Pinglong Conference in 1947 ensured the equality of all ethnic nationalities. The Pinglong Conference has been the cornerstone of all policies concerning the ethnic nationalities of Burma, in order that they can live in harmony and peace. However, unfortunately, the SPDC's Constitutional Principles lack this essence.

The military rulers have apparently realized the necessity of a constitution in order to legalize their rule and create legitimacy to rule the country indefinitely. Given the political history and on the basis of lessons learned from historical evidence, the "principles" fail to make constitutional provision for the prevalence of the constitution, even when its rule might have been interrupted through acts of force against the constitutional order. Those acts are to be declared irrevocably void of any legality or claim to legitimacy from the unelected government. The political dynamic of the country has to be changed in order that society may be

transformed.

Under the principles formulated by the SPDC, the people will not be able to practice self-determination and self-government in their own local areas as an exercise of decentralization. Instead, the SPDC's constitution will assuredly exercise more rigid centralization than the two previous constitutions in Burma – the 1947 and 1974 Constitutions - denying both individual rights of every citizen and collectives rights of ethnic nationalities. Accordingly, the military representatives, appointed by the Military Chief of Staff and their fabricated alliances, will overwhelmingly dominate the Union Assembly and every State and Regional Assembly in terms of legislation. The Union President, being former military or still in active service, will control every administrative mechanism in the whole country through the State and Region governments, where the military Ministers have already been incorporated. It is also obvious that the Judiciary cannot be a reliable state institution for the people as it has to be subservient to the Executive.

Due to a lack of other governmental institutions such as a National Human Rights Commission, individual citizens will certainly be vulnerable to serious human rights abuses. Under the SPDC's principles the current restrictions over political parties will continue unabated, and the emergence of civil society organizations that will provide assistance to the weaker sectors of the society, such as victims of crime, minorities, women, children, disabled etc, will remain a dream. Democratic legitimacy is eroded and the ground for a military coup is created. The continuing impasse will generate fear; the military will abandon parliamentary cover shortly; and, install military rule again. As such, instead of resolving conflicts peacefully in a future Burma, the constitution to be produced by the SPDC will certainly create more hostilities that will eventually lead to another vicious cycle of armed conflicts repeatedly. The whole constitution drafting process, initiated by the SPDC currently, in line with the already designated 104 principles, will become meaningless except that it will provide the junta with a longer time to prolong its rule reasoning that it is required to preserve stability in the country.

### **Recommendations**

- Fundamental human rights in terms of individual rights of every citizen and collectives rights of ethnic nationalities must be protected in accordance with the constitution and constitutional remedies must be provided for the victims whose rights are violated.
- The Constitution is to be guided by a modern concept of the State, that is, popular Sovereignty must be the criteria for legitimacy to govern. The powers of the government are required to be limited. Rule of law and equality before the law must be part of the guiding principles. The Constitution should be the supreme law of the land, which is non-derogatory.

- Constituent units are to be recreated on the basis of self-determination and equality for all ethnic nationalities within the framework of a Federal Union.
- Presidential system is not compatible with Burma, being a multi-ethnic society, and parliamentary system under which Prime Minister is the Head of the Executive is to be exercised for Federal Government.
- The Constitution has to constitute a clear separation of powers among the Executive, Legislature and Judiciary with a check and balance system. Legislature shall not make any law abridging the fundamental freedoms.
- UN Declaration on Independence of the Judiciary must be guaranteed in accordance with the constitution; the constitutional framework must be established in order that the Judiciary must be independent mainly from the interference of executive, governmental authorities and other local tyrants, and the judges must be subject only to the constitution and the laws. Supreme Court should have power on judicial review and writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari as provided for in the 1947 Constitution. Judicial power must also be distributed to state or provincial judiciaries.
- Bicameral legislatures at the national level, autonomous units are to be symmetrical in power and status.
- In regard to electoral system to be exercised for People's Assemblies in both central or federal level and state or provincial levels, proportional representation system is an appropriate one so as to promote equality among various ethnic nationalities as well as other social strata.
- For ethnic minorities, self-government is to be constitutionally entrenched. To this end, decentralization of power is to be exercised so as to reconstitute the polity on a federal basis as parliamentary representative democracy; and, the division of power in terms of exclusive, concurrent and residual legislative powers must be prescribed between the center and the constituent units.
- In order to monitor the exercises of transparency, accountability and good governance principles in the various levels of governments, the governmental institutions such as the National Counter Corruption Commission and others shall be created in accordance with the constitution.
- A legal framework for the co-existence of a national federal government and state governments to be organized through their own state constitutions, which shall regulate the existence of local political institutions. To be valid they must respect the representative principles embedded within the Federal constitution.
- Three basic freedoms - the right to freedom of association, assembly, and expression - are constitutionally guaranteed so as to facilitate the emergence of civil society in various levels of administration in respect of central, state or provincial and local governments.

- Equality and equity should be the ruling constitutional doctrine, on which a constitutional framework is set up, including one the formation of financial commission, as an independent governmental institution, so as to distribute finance equitably among the constituent units.
- The Constitution must meet the aspirations of the people, competitive but co-operative. It has to provide affirmative actions for weaker sectors of the society. To this end, formation, existence and function of independent associations, Non Governmental Organizations, and Legal Aid Organizations are to be guaranteed in accordance with the constitution.
- The Constitution has to balance between individual and community interests and conflict resolution by peaceful means should be the end goal.

### Endnotes

1. Bangkok Post
2. Dr. Maung Maung LL.D. (UTRECHT), OF LINCOLN'S INN, BARRISTER-AT-LAW, "Burma's Constitution", The Hague, Martinus Nijhoff, 1959, p.116
3. Translator's note: The term "representatives" is used synonymously as "members."
4. Harold Crouch, "Democratic Transitions in Asia: Establishing Civilian Supremacy in South East Asia" Published by Select Publishing Pte Ltd in association with Friedrich Naumann Foundation, 2001; p. 175.
5. Agus Widjojo "Democratic Transitions in Asia: Repositioning of the Indonesian Military" Published by Select Publishing Pte Ltd in association with Friedrich Naumann Foundation, 2001; p. 162.
6. "PARLIAMENTARY VERSUS PRESIDENTAL GOVERNMENT," Oxford Readings in Politics and Government , Edited by Arend Lijphart, p.23
7. Bangkok Post © 2003, Global Viewpoint, Author Ra Jong Yil, National Security Adviser to Republic of Korea.
8. Explained by U Ba Gyan., Former Judicial Minister after independence of Burma. Constituent Assembly (Parliament) Record; September 2, 1948.
9. Article 9(3), International Covenant on Civil and Political Rights (ICCPR)
10. Article 9(4), ICCPR
11. Universal Declaration of Human Rights (UDHR) would not normally be considered as a binding source of law, however, has been used as binding in conjunction with the *GA Declaration on Friendly Relations in Nicaragua Merits Case (1986)*
12. Widespread and systematic imprisonment by the State in violation of fundamental rules of international law is now considered a crime against humanity, Article 7(1)(e), ICC Statute
13. Article 10, UDHR; The right to a fair trial is reiterated in further detail in Article 14(1), ICCPR; "Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..."
14. International Covenant on Economic Social and Cultural Rights (ICESCR)
15. Article 8(1)(a), ICESCR and Article 23(4), UDHR.
16. Article 8(1)(c), ICESCR
17. Article 21, ICCPR
18. Article 12, of the UDHR and Article 17, of the ICCPR
19. Article 8(3)(a), (ICCPR)
20. Burma: Human Rights Yearbook 2001-2002, pp. 16
21. The widespread or systematic enslavement of the civilian population by the State now qualifies as crime against humanity, as embodied in Article 7(1)(c) of the Rome Statute of the International Criminal Court (ICC).

22. Article 13(3) and 13(4) of the ICESCR
23. Brownlie BDIL, 3, 19
24. Territories which have not yet attained self-government and are therefore administered by a different country i.e. colonies or territories which resemble colonies
25. Post World-War I territories that were administered by one of the allies under the supervision of the League of Nations.
26. The trusteeship system, based on the mandate system, has ceased to exist since 1994. The most problematic case concerning trust territories right to self-determination was the *South West Africa* case, ICJ, 1950, 1955, 1956 (Namibia)
27. Brownlie BDIL, 44.
28. GA Resolution 47/135 of 18<sup>th</sup> December 1992.
29. Article 1(4)
30. Civilians must not be directly targeted
31. Military action must be proportionate to aims
32. Suffering that would achieve no military advantage
33. The sick and wounded, POW and civilians
34. *Nicaragua v. US*, ICJ (1986), 14, 113-4
35. Article 2, CEDAW, Article 2(2), CRC
36. Burma: Human Rights Yearbook 2001-2002, pp. 334
37. Education Report 2002, All Burma Federation of Student Unions (ABFSU), May 2003, pp. 15
38. Article 38(3), CRC
39. Article 38(2), CRC
40. International law prohibits the recruitment of children under 15, as recognized in Article 8(b)(xxvi), ICC Statute  
. The Defense Service Act establishes the minimum legal age for recruitment as 18
41. For further details on child soldiers see Cohn, I. and Goodwin-Gill, G. S., *Child Soldiers*, (1994)
43. Article 10, CEDAW
44. Article 12, CEDAW
45. Article 6, CEDAW
46. Article 7, 8, 11, 13, CEDAW
47. *Barcelona Traction* case, Belgium v. Spain, ICJ, 1970, 3, paras. 33 and 34.
48. Dr. Maung Maung LL.D. (UTRECHT), OF LINCOLN'S INN, BARRISTER-AT-LAW, "Burma's Constitution", The Hague, Martinus Nijhoff, 1959, p.169

# Analysis of the National Convention procedural Code

*Khin Maung Win\**

## **Regime's political moves leading to the National Convention**

### **The 1990 General Election: Elections for the People's Assembly**

In its first announcement on assuming power on 18 September 1988, the SLORC advised that it had assumed state power, inter alia, "to stage democratic multiparty general elections". The SLORC quickly promulgated the Political Parties Registration Act and permitted political parties to register, recruit members and to engage in limited political activities.

On the 31 May 1989 the SLORC enacted the People's Assembly Election Law "In order to hold free and fair multi-party democratic general elections and to elect representatives of the People's Assembly". According to Article 3 of the Election Law: "The People's Assembly shall be formed with the People's Assembly representatives who have been elected in accordance with this law".

The SLORC advised in its 43<sup>rd</sup> News Conference of the 9 June 1989:

"Presently we have two constitutions in our country; that is the 1947 Constitution and the 1974 constitution ... The elected representatives can choose one of the constitutions to form a government, and we will transfer power to the government formed by them. We are ready to transfer power to the government that emerges according to the constitution. If they do not like the two existing constitutions, they can draw up the constitution ... The elected representatives are to

draw up the constitution”

General elections were held on 27 May 1990. The NLD won over 80 percent of the seats. These elections had been called “to elect representatives of the People’s Assembly” (According to the introductory words of the State Law and Order Restoration Council Order Law No. 14/89 of 31 May 1989. Also referred to as the ‘People’s Assembly Election Law’).

A “People’s Assembly” (i.e. Parliament) was established by Burma’s 1974 constitution and operated (under the control of the military) until it was dismissed by the military on the 18 September 1988. According to Article 41 of the 1974 constitution:

“The People’s Assembly is the highest organ of state power. It exercises the sovereign powers of the State on behalf of the people”

### **The Military’s steps toward a new constitution**

Following the stunning victory of the democracy parties in the May 1990 elections, it quickly became apparent that the military had no intention of transferring power to the newly elected Parliament. At least, it would not transfer power to a parliament dominated by pro-democracy parties. The military had anticipated a victory by the pro-military, National Unity Party, the successor organization of the former ruling Burma Socialist Program Party, which was heavily financed and backed by the military.

To deflect the mounting domestic and international pressure to recognize the election results and to convene the People’s Assembly the SLORC announced that a new constitution must first be approved before the People’s Assembly could be convened.

In the SLORC’s first official statement of its position since the May elections, Maj-Gen Khin Nyunt, First Secretary of the SLORC at the time and now the Prime Minister, announced during the SLORC’s 100<sup>th</sup> News Conference on 13 July 1990:

“At the present time we should consider the choice between the 1947 Constitution and the 1974 Constitution. It is evident, because of changing times and conditions, that neither constitution is now suitable or usable. So which constitution should we use in transferring power? We should draft a new constitution. For a strong government to emerge we should proceed systematically according to the law.

...The winning parties are to work for the emergence of a resolute constitution in the long term interests of the state and the entire people. The political parties are responsible for drafting the constitution.

As for our SLORC, we will not regard it as something that is of no concern to us. I would like to say that the SLORC would give as much possible assistance as possible. ...it is of concern to us and we are responsible for it.”

Two weeks later, on the eve of a meeting of NLD representatives elected to the People’s Assembly, the SLORC issued Announcement No. 1/90.

“... a political organization does not automatically obtain the three sovereign powers of legislative, administrative and judicial powers by the emergence of a People’s Assembly. These powers can only be obtained based on a constitution.

... the representatives elected by the people are responsible for drafting a constitution for the future democratic state.

Drafting an interim constitution to obtain state power and to form a government will not be accepted in any way, and if it is done, effective action will be taken according to the law.”

The elected representatives of the people would not be permitted to convene the People’s Assembly. They would, according to these announcements, be permitted to draft the constitution, but not an interim constitution.

In its Announcement No.1/90 the SLORC also announced its three guiding tasks: “the prevention of disintegration of the Union, the prevention of disintegration of national unity and the perpetuation of sovereignty”. These principles would soon become the guiding principles for the drafting of SLORC’s own constitution. These principles of extreme nationalism are designed to deny equality and self-determination to Burma’s numerous ethnic nationalities.

### **The demands of the People’s Representatives**

Despite SLORC’s Announcement No. 1/90, the NLD’s elected representatives to the People’s Assembly gathered at Gandhi Hall in Rangoon to discuss the issue of the transfer of power and the formulation of an interim constitution.

In its Gandhi Hall Declaration of the 29 July 1990 the NLD parliamentarians, representing over 80 percent of the elected representatives of the People's Assembly, endorsed the NLD's "1990 Provisional Constitution (draft)". This interim constitution was based on Burma's 1947 Constitution and provided a solid constitutional basis for the convening of the People's Assembly. The NLD representatives announced that: "It is our conscious opinion that this provisional constitution will bring about the transfer of power in accordance with the law".

In respect of the drafting of a permanent constitution the NLD representatives declared in point 9 of the Gandhi Hall Declaration:

"Only the People's Assembly has the responsibility to adopt the new constitution. ... A constitution drawn up at any time and at any place other than the People's Assembly ... will not have an executive power [and] will not have any honour. It is of vital importance to convene the People's Assembly expeditiously so as to draw up a new constitution which aims at building a new democratic union aspired by the people."

It was also resolved to call on the SLORC to convene the People's Assembly in September 1990 and for the SLORC to engage in a dialogue with the NLD.

In a joint statement dated the 29<sup>th</sup> August 1990, representatives from the NLD and the United Nationalities League for Democracy (who collectively represented over 95% of all elected representatives of the People's Assembly) issued the Bo Aung Gyaw Declaration No. 1. This declaration endorsed the resolutions of the Gandhi Hall Declaration and further stated that "the People's Assembly should write and promulgate a lasting constitution". A committee of suitable persons, including representatives of Burma's ethnic peoples, was to be established under the supervision of the People's Assembly to formulate principles for the drafting of a new democratic constitution.

### **Emergence of the National Convention**

The SLORC refused to convene the People's Assembly or to enter negotiations with the NLD. The SLORC soon hinted that it would establish a National Convention to discuss the constitution. However over two and a half years passed before the SLORC's National Convention held its first session in January 1993.

According to the National Convention Procedural Code (1993) the National Convention was tasked with "laying down principles for the drafting of a 'firm' constitution". Theoretically, the People's Assembly remained responsible for

drafting the final constitution, and once the constitution was finalized the transfer of power to a democratically elected government would be effected by the military.

The SLORC's National Convention has many superficial qualities creating the appearance of a genuine constitutional drafting institution. The term "National Convention" itself is frequently used to refer to constitutional drafting institutions established by democratic nations seeking popular participation in their constitutional making processes.

The SLORC has also incorporated the terminology (but not the spirit) of Bo Aung Gyaw Street Declaration No. 1. Hence the National Convention is tasked with "laying down principles" rather than drafting a constitution itself. Also, representatives from several ethnic peoples and other appropriate organizations and individuals are said to be participating in the convention.

The National Convention also appears to be a predominately civilian organization, with delegates coming from an apparently diverse range of social groups. The SLORC therefore argues that it is engaging in widespread public consultation in its constitutional making processes. A small number of elected representatives were also entitled to participate in the National Convention.

The National Convention Procedural Code contains several features to cloak the National Convention in a veil of legitimacy. For example, one (of the six) of the aims of the constitution is the "development of genuine multi-party democracy" (Art. 1(d)). Delegates "have permission to openly discuss their ideas and suggestions ..." (Art. 5(c)). There are also vague references to "efforts for consensus" between delegate groups (Art. 30(a)).

### **The Procedures of the National Convention: Total control of the military**

In reality the National Convention is a sham. It is tightly controlled by the military to ensure its acquiescence to a constitution drafted entirely by the military. In reality the representatives of the people elected in the May 1990 elections have been virtually excluded from the constitution drafting process.

The SLORC has adopted several mechanisms to control the National Convention which have been revealed from an analysis of media reports and the National Convention Procedural Code and in particular from the eye witness testimony provided by former National Convention participants who have since fled to Thailand.

## **Composition of National Convention**

First, section 2 refers to composition of national convention delegates and interalia states:

- (c) Indigenous nationalities' delegates
- (d) Peasants' delegates
- (e) Workers' delegates
- (f) Intelligentsia's' delegates
- (g) Civil service delegates
- (h) Appropriate persons

All these will be picked up by the military. They will be its proxies and not genuine representative. The national convention is reduced to a rubber stamp of the military the principle of inclusiveness is violated. The elected members form only 30% of the total number of those who form the Convention.

## **The composition of the Presidium**

It is also arbitrary and manipulated to preserve the domination of the military. Out of 45 Presidium members, only 10+1 are from elected persons. Under article 10, ten members of the Presidium shall have to be nominated from the 10 parties listed therein. It means that the NLD has only one member in the Presidium. Thereafter, there is further erosion where out of 12; only 8 delegate groups can become members of the Presidium. A member of NCCWC has been included in the Presidium to make it nine members and he shall be the chairman of the meetings. The chairman has been given under 15(e): To decide whether the matter discussed by a delegate is in order as to the meeting agenda, and found to be out of order, to give warning, and report to the presidium if he thinks that action should be taken against the delegate. This is restriction on freedom of speech.

An appearance has been designed to reflect diversity. But in reality it is a proxy of the military. The process must be open, democratic and accountable to the people. Guidance by respect for the universal principle of human rights, gender equity and democracy.

Secondly, almost all delegates were pre-selected by the military. Only 99 out of the total of 702 delegates were elected representatives. Many of the civilian delegates were unaware of the true nature of the National Convention and attended in good faith in the belief that they may influence the military's new constitution. However delegates to the National Convention were predominately pre-selected on the basis that they were expected to support the military's objectives. While in attendance at the National Convention delegates were entitled to a significant wage, housed in comfortable accommodation and provided with medical and shopping facilities. Various goods and services were provided to delegates that were not ordinarily available to members of the public.

Thirdly, the military directly controls the proceedings of the National Convention through its organizing committees (including the NCCC and the NCCWC). These committees are dominated by senior military officers and co-ordinate and manipulate every aspect of the convention. For example, every speech must be approved by the military's NCCWC committee and every session of the National Convention is chaired by a member of the NCCWC. A row of military officers (being members of the NCCC and NCCWC) sit along the front row of the National Convention creating an intimidating environment for each speaker. All delegates to the National Convention are constantly monitored by military intelligence. A delegate expressing any dissatisfaction with the military or the National Convention is quickly removed. One delegate was arrested and expelled for suggesting, in private, that the current military rulers, the SLORC, were the same as the former ruling Burma Socialist Program Party.

Fourthly, the National Convention Procedural Code, on the whole, is the primary instrument for the suppression of free dialogue at the National Convention. All discussions and principles derived by the National Convention must be within the aims set out in Article 1 of the code, and include the "participation of the military in the leading role of national politics" (art. 1(f)), the "non-disintegration of national unity" (art. 1(b)) and the "stability of sovereignty" (Act. 1(c)).

A delegate may only speak before the National Convention if approved by the military's NCCWC (art. 5(c), 16(c) & 37). To obtain approval a delegate must first submit a discussion paper to the NCCWC for its approval. If approved, the delegate's discussion paper may be substantially edited by the NCCWC. A delegate may only speak in accordance with the approved discussion paper (art. 45(j)). All "discussions" (i.e. recitation of the discussion paper) during the National Convention must be limited to promoting the aims set out in Article 1 of the Procedural Code (art. 5(c)). Further, delegates must not indulge in "grandstanding speeches" (art. 45(i)), nor "use language damaging to national unity" (art. 45(b)), nor speak "defamatorily against the beneficence of the State" (art. 45(a)). Delegates must not indulge in speeches "damaging the prestige of other organizations" (i.e. the military) (art. 45(i)) and a delegate must not distribute any papers on the convention premises, without the permission of the NCCWC (Art 47(e)). The principle of transparency is violated.

Breaches of these provisions are severely dealt with by the military authorities. One delegate, Dr Aung Khin Sint, was arrested and sentenced to 20 years imprisonment for distributing a paper among delegates.

Fifthly, the military controls the flow of all information from the National Convention. All information in relation to the National Convention, including discussion papers, are regarded as "state secrets" (Code art. 8(j), 16(h), 47(f)). All "news" in relation to the National Convention may only be released by the

military's NCCWC (Code art. 8(j)). It is theoretically illegal to discuss even the colour of the floor coverings at the National Convention. Any criticism of the military's constitution expressed by a delegate on the floor of the National Convention will never reach the ears of the Burmese public. In fact it would be very difficult to know what happens in the National convention if it was not for the information supplied by former delegates who have fled Burma. The principle of righty to information is violated.

Sixthly, delegates to the National Convention are not permitted to form a collective view on any issue. Delegates are only permitted to discuss issues in relation to the constitution, which have been approved by the military's NCCWC. Delegates are not permitted to vote on any issue or attempt to form any type of consensus. The Procedural Code makes no provision for voting, secret or otherwise, on any issue before the National Convention.

In reality, delegates to the National Convention have not approved the constitutional principles emanating from the National Convention. This is not their function. Delegates to the National Convention may only express an opinion of support for constitutional principles submitted by the military. The right to democratic decision making is violated.

Finally, the National Convention is being held in Burma, which has been ruled by the military since 1962. There is no freedom of speech, freedom of press or freedom of association. Human rights abuses by the military are widespread throughout Burma. Delegates to the National Convention are frequently subjected to intimidation by the military while the convention is out of session. One delegate, Sai Soe Nyunt, was severely beaten by a group of soldiers in December 1996. Suffering from severe injuries, including a broken jaw, he was bound and dragged to a military camp of Infantry Battalion 58. After further beatings he was taken to Maj. Win Thu who told him "...National Convention. It is full of whores, drug abusers, and drug runners. It is nonsense! Get out of it!". Sai Soe Nyunt received no medical treatment for his injuries, and no action was taken against his attackers.

The National Convention established by the military lacks any credibility as a constitutional making body. It is un-elected and unrepresentative. There is no freedom of speech or discussion. There has been no public consultation or participation. Public discussion outside the National Convention is prohibited. The National Convention is a front. The draft constitution presented to the media has been fully drafted by the military without any significant assistance from the National Convention. The principle of accountability to the people whom the representatives are to represent is toally flouted.

### **The NLD and the National Convention**

There were initially 88 members of the NLD invited to attend the military's National Convention, out of a total of 702 delegates. Only one member of the NLD was permitted to join the 45 person "presidium", which was given a minimal role in chairing the National Convention. During the early sessions of the National Convention the NLD members were given limited opportunities to express their opinions in relation to the proposed constitutional principles. However the views of the NLD were not subject to a free and fair vote and were not publicised outside the National Convention. It quickly became apparent that while the military was engaging in the pretence of hearing the views of the NLD on some constitutional issues, it was refusing to incorporate any suggestions of the NLD into its new constitution. The latest draft of the military's constitutional principles entirely exclude any suggestions of the NLD.

On 27 November 1995, the National League for Democracy sent a letter to the SLORC requesting the proceedings of the National Convention to be liberalised. The military rejected the NLD's appeal and on the 28 December 1995 the NLD began a boycott of the National Convention. Almost immediately all delegates from the NLD were expelled by the military from the National Convention. Very few elected members of the People's Assembly are now participating in the National Convention.

### **Law No. 5/96**

Following its dismissal from the National Convention the NLD announced that it would continue to work on a new democratic constitution for Burma based of respect for human rights and the equality for all of Burma's peoples. As a direct consequence the military issued law No 5/96 titled: "The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Opposition".

This draconian law provides for the imprisonment of any person for up to 20 years or the banning of an organisation who/which:

- "draft and disseminate the constitution of the state" (cl. 5(d))
- "carry out the functions of the National Convention" (cl 5(d))
- "deliver speeches or make statements to undermine, belittle and make people misunderstand the functions being carried out by the National Convention" (cl 5(c))
- "deliver speeches or make statements in order to undermine the stability of the State" (cl.5(a)).

It therefore became illegal for any person in Burma to draft a new constitution, or to discuss alternative constitutional principles or alternative constitutional drafting processes. Burma has therefore become the only nation in the world to assert that its constitution is drafted with the participation of the public while at the same time threatening to imprison a person for 20 years for criticising the constitution drafted by its rulers.

It is interesting to note that since the expulsion of the NLD members, the military has rarely convened the National Convention. Despite the infrequent sessions of the National Convention the military has been slowly drafting its new constitution without any pretence of consultation with a National Convention.

### **Endnotes**

\* The author is an Executive Committee Member of the Burma Lawyers' Council.

## Road Map Or Road Trap?

“Politics is war without bloodshed”

*BK Sen\**

### **The Meaning**

The term “road map” – currently being used by Burma’s Prime Minister Gen Khin Nyunt to outline the country’s supposed move towards democracy – is not a new one in constitutional politics. The concept has been extensively used in the Israeli-Palestinian conflict, as well as in the ethnic conflict in Sri Lanka. For indeed, the term “road map” evokes a powerful discursive meaning. When venturing into unknown territory, a road map is the tool crucial to finding a destination, the guide that prevents travelers from becoming lost in a labyrinth.

In the context of Burma, this term has been widely used to mean the discovery of a new map to end conflict and to reach the goal of peace and good governance. Officially, Burma’s new “road map” contains 7 steps to the establishment of a democratic State. Yet in reality, the term is a smokescreen. Prime Minister Gen Khin Nyunt’s purported “road map” is empty political rhetoric, used to obscure the fact that the government has made no clear commitment to either a road or a map to democracy. In truth, Burma needs no map, as its road must be a straight one – the restoration of civilian rule.

### **The Background**

#### *Why a road map?*

In May 1990, the military Junta (SLORC) held a General Election in order to contain the unprecedented waves of dissent released by the 8.8.88 uprising. Yet to the shock of Junta officials, the National League for Democracy (NLD) swept

the polls – even with Daw Aung San Suu Kyi and other top leaders placed under house arrest. The people’s verdict was as clear as daylight, with the results of the election calling for an end to 50 years of military rule. It was a watershed in Burmese politics.

The junta had only one weapon to refuse transfer of power. It had to buy time. Strategically, Junta officials floated the idea of drawing up a Constitution and set up a National Convention in 1993. Yet since its conception, the convention has been plagued by empty promises and setbacks. And in August 2003, the “road map” plan was announced, again for the sole purpose of buying time. It is said that when in battle, if an army cannot retreat or advance, the only way it can survive is to buy time to reinforce itself. Approached in this light, Khin Nyunt’s “road map” takes on new meaning.

It must be asked why, when talks have been held for the last 2 years, this sudden step has been taken. There was no official announcement of talks being terminated or suspended, making it reasonable to conclude that they were unsuccessful. It can be assumed that having failed with Daw Aung San Suu Kyi, the Junta’s only option was to go ahead without her. Hence, the road map and the unilateral announcement of the road map.

A clear understanding of the Burma’s recent past is crucial to the assessment of this new political move by the Junta. The launching of the road map was preceded by a cosmetic reshuffle of the state council of the SPDC. The head of the military intelligence, Khin Nyunt was made the Prime Minister and saddled with the job of marketing the “road map”. He is the same man who primarily managed the talks with Daw Aung San Suu Kyi.

### *National convention*

The National Convention has a very convoluted history. In 1992, the announcement for convening the national convention in 1993 was made. The National convention opened in February 1993, met again in April, was suspended in June, opened again in September, and suspended again in April 1994. Specific chapters were drawn up and a presidential system approved. On November 28, 1995, a 1/4 reservation for the military was introduced and the junta expelled the NLD. Finally, in March 1996, the national convention was adjourned, leaving the matter until August 2003, when the “road map” to democracy was announced.

### **Credibility**

Thus, considering this background and the junta’s track record, it must be asked whether or not the “road map” will have any impact at all on Burma’s political system. Any credibility on the part of the Junta has been compromised by a deep sense of public mistrust. Notably, the Dabayin event - a plan to eliminate Daw

Aung San Suu Kyi and her party colleagues during reconciliation talks - has not yet been investigated. If the SPDC had come clean following the scandal, it would have been a great contribution to reconciliation. Instead, Daw Aung San Suu Kyi and the entire central committee were arrested. Currently, all NLD offices have been closed down, although it remains a legally registered party and the party with the people's mandate. The Prime Minister, ignoring the leader of the winning party, now secretly sends envoys to meet other parties in an attempt to split the ranks of opposition and to revive the National convention.

### **Legal competency**

The people's mandate given in the 1990 election called for the end of military rule and all further military policy activities. As such, the SPDC has no authority to convene the national convention. In the eye of law, the moment the election results declared the list of winners, the SPDC became *functus officio* - legally bound to hand over power to the winning party.

The SPDC contends that the objective of the election was not the transfer of power but the drafting of a new constitution. However, military participation in drafting the new constitution remains inexplicable and unacceptable. Assuming that the elected members constitute a Constituent assembly and not a Parliament, then it is for them only to debate and formulate the future constitution. Under no law or democratic principle can the military have any status in the constituent assembly. Any accommodation given to the military in the forum of the constituent assembly is a betrayal of the people's mandate.

Under the Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights it is stated that "the will of the people shall determine the government of the day." The UN General Assembly has also given recognition to the mandate of the 1990 election. Key international players, including USA and the EU, have imposed sanctions on Burma, and the ILO has registered its disapproval of the regime's violations of human rights. Even the ASEAN has passed resolutions asking the junta to enter into political negotiation with Daw Aung San Suu Kyi. The ruling Junta also accepted the legitimacy of the winning party in the election and entered into talks with it in respect of the transition of powers.

Yet it is surprising how successfully the junta has fooled the people of Burma and the international community about its imperative role in drafting the future constitution. Put mildly, the principles designed to draft the new constitution are completely fraudulent. Even without going into the constitution's merits, the principles can in all sincerity be thrown away on rule of law. The significantly serious as a matter is, it can start on a king slave, rule of law being the guiding principle. One thing is clear it cannot be an Hush-hush affair. There has to be a debate, promotion/ facilitation and conduct of civil education to stimulate the

awareness of the constitutional issues. The forces thereafter shall have to unite on a common view on the type of governance the constitution could bring about.

*Its merit, the seven steps:*

1. To reconvene the National Convention which was temporarily adjourned in September 1996
2. When the National Convention is successfully reconvened, to consider all measures one by one, for the emergence of disciplined democracy
3. To draw the details of the Constitution in accordance with the principles laid down by the National Convention
4. To hold a referendum for the confirmation of the Constitution
5. To hold a fair election in order to elect a Parliament according to the Constitution
6. To hold a session of Parliament with the elected Members according to the Constitution.
7. The elected Head of State and the Government constituted in the Parliament and the organs of the State shall establish a new modern democratic State

Steps 1, 2 and 3 are important. The National convention is to be reconvened, meaning that the 104 detailed principles are to be deemed to have been accepted. The central question of military participation cannot be reopened. The Presidential system in abrogation of autonomy of the states is a closed chapter.

*The inherent infirmities*

1. Fully 104 principles and 6 guidelines ensure a commanding role for military in future affairs of the State
2. Lack of any substantial democratic reforms
3. No time frame for the entire exercise
4. Unilateral announcements generate mistrust
5. Reconvening means from the point it was adjourned. It means acceptance of the 104 principles laid down

In a short basic analysis, it is unacceptable:

- A Presidential system, and not a Federal Union, has been advocated
- Fundamental rights have not been guaranteed and constitutional remedies on infringement have not been provided
- In the Constituents of the State (Republic), there is preponderance of one ethnic nationality
- The composition of Parliament is one-fourth non-elected being nominated by the Defense Head
- Election law has not been incorporated for the election of the president
- The President (there is no Prime Minister) shall nominate the Chief

Ministers of States, the Chief Justice, Attorney General etc. and the Parliament has to give approval

- The universal principle of democracy, meaning that the elected representatives through adult franchise will determine national issues, has been undermined
- There is no provision for Judicial Review and the powers of the Supreme Court have been downgraded
- There is no provision that the Parliament cannot pass law which is against human rights, fundamental rights and liberties

The road map requires that two main players the Junta and other supporting players NLD and ethnic leaders come together. Scripting an ending to 50 years of conflict requires domestic political consensus. Equally important is the support of international and regional players. To begin with, there has to be agreements and they have to be adhered to in letter and spirit by the two sides. A glimpse at Burma's handling of past political conflicts reveals a long list of broken promises and even violent attacks on the other mandate-winning players. Agreements in the past, including the cease-fire, are grim reminders of the mistakes that should not be repeated.

If the results of the new "road map" are to be meaningful, there must be a demonstrated move away from the status quo. A first step should be the withdrawal of all restrictions condemning Daw Aung San Suu Kyi to house arrest. As the leader of the Party having the mandate of the people, Daw Aung San Suu Kyi must be free to move about, talk and carry on her politically legitimate activities. This has to be followed up by the unconditional release of all political prisoners. The junta's failure to meet even these minimum requests has created a continued skepticism on all counts. At the least, three years' worth of talks should have moved on to a dialogue about core issues, as well as an overall greater inclusiveness in the conflict resolution process. Prime Minister Khin Nyunt claims that the conflict should be resolved on the basis of his "road map", yet the crucial coming together of political forces to make this "road map" work remains a distant reality. Essentially, Burma is going through a phase of a war without blood shed.

### **Power – Sharing**

Thus, democracy activists face a critical problem. With neither an immediate possibility of collapse of the junta regime nor any prospects for overthrowing it, what is the way forward? Although the argument that the 1990 election results should be honored and power transferred to the mandated party is a valid one, in reality it has been pushed aside and lost in the limbo of history. The people who have given the mandate have lost the power to enforce it.

In such a situation, is negotiation the only alternative path? Whether the regime will negotiate considering the recent Dabayin episode and the continued detention of Daw Aung San Suu Kyi and other political leaders is a pertinent question. Currently, the talks have been unilaterally suspended and Prime Minister Khin Nyunt's road map has been given. The junta has adopted a "take it or leave it" attitude in regards to the road map, and there is no indication of talks being resumed.

Activists must seize the initiative. A negative response to the regime strategy is not sufficient, and minimum demands for a level playing ground must be made immediately. Thereafter, a proposal for power-sharing should be given. It must be noted that the effects of a principled approach to political reconciliation with the effect of power sharing is a mechanism to give expression to readiness to end exclusive politics. There may not be optimism about possibilities for conflict management offered by power sharing. But in Burma's situation, where the military has ruled for decades, power sharing can have a role in political socialization and help facilitate an eventual transition from one political system to another.

In order to preempt the cycle of violence born of extreme levels of fear, hatred, frustration and political tension, efforts toward reconciliation need to start early. To this end, the international community cannot afford to remain on the sidelines under the misconception that a domestic agreement can be the only effective form of conflict management. Sustainable reconciliation attempts require the engagement of the international community. A focus on a power-sharing arrangement would help ensure good governance and international assistance. The principles of good governance should be: participation in decision making at all levels, transparency, accountability, independence of Judiciary, devolution and autonomy at the bottom.

## **Conclusion**

Nothing happened thereafter for two years. Then in mid-1992, SLORC announced the convening of a national convention or constituent assembly to lay down the guidelines and basic principles of the new constitution. On January 1993, the first session was held. SLORC declared the convention to have six aims. The overriding stipulation was the leading role for the army in drafting the constitution. After several sessions the national convention abruptly came to a halt in 1996 when the NLD members walked out.

Now, nearly 10 years later in August 2003, the SPDC, the successor of SLORC, has announced a "road map" purported to lead the country to democracy. The core issue in the road map is reconvening the national convention and finalizing the draft of the new constitution. It is elementary in political science that the military has to remain subservient to constitutional rule. The overall ambiguity

and vagueness of the new draft violates the basic principles of law. The new constitution must be unambiguous, clear and definite.

Prime Minister Khin Nyunt's new "road map" must be seen for what it is: a superficial and deeply flawed proposal aimed to divert attention away from true political reform. Below the surface lies a dangerous agenda, one that if left unchecked could result in the nullification of the 1990 election results. If too much time and resources are invested in cosmetic plans such as the "road map", the junta will soon be able to claim the people's mandate has become outdated and time has run out. Back in 1990, the military did not dare to declare the election results as inoperative. Instead, August 2003's road map has become the clever device to achieve that goal.

A landmark international meeting of representatives from 13 countries on Burma road map toward national reconciliation was held at Bangkok on Dec 15 at the initiative of PM Thaksin. Bangkok called the meeting of likeminded countries—now called Bangkok Process—to assist the junta in reaching a solution to the political statement. The following emerged

The forum did not demand any commitment from Burma to move toward democracy.

That a communication, confidence building as part of national reconciliation, has been established between the Prime Minister and opposition leader Suu Kyi. 3 steps of the road map are to be implemented in 2004 including the setting up a national Convention to draft a new constitution.

Eight strata of Burmese society will participate in the national convention; political parties including NLD, ethnic minorities, farmers, military, civil servants and workers.

Next round of talks would be held early 2004 to discuss various elements in the reconciliation process.

Discussed the assistance to Burma if junta if junta made tangible progress. Analysts will assess the meeting positive, that there has been a movement toward breaking the deadlock. There has been a shift, however ineffective, that may be. The attitude of the Junta has been that the issue is an internal affair, outsiders have nothing to say or do. Now that it has come out in the International forum to defend itself is something noteworthy. Sukakiart, Foreign minister Thailand said: Burma had sent its foreign minister to give: "testimony" before the international community for the first time and had demonstrated its commitment to the processes. The international community is the jury and Burma is in the dock.

The silver lining in the otherwise dark cloud in the political horizon of Burma is that the key issue, Burma's democratic transition has been internationalized. International assistances was linked with progress in Burma's reconciliation

process Participants include UN Special envoy to Burma, Indonesia, Australia, Japan, China, India, Singapore, Italy, Austria, France, Germany: Otherwise, there is no solid result from the meeting. The key issue of release of Suu Kyi and her colleagues has been ignored. The road map will be on sands of time till this crucial issue is not addressed.

### **Endnotes**

\* The author is an Executive Committee Member of the Burma Lawyers' Council.

## Clash of the Titans

*Aung Naming Oo\**

The protracted wrangling over Burma's proposed National Convention and the constitution is a classic example of a bargaining dilemma: clashes over an extreme asymmetry of interests.

The Burmese military junta, officially known as the State Peace and Development Council (SPDC), is demanding too much. It has asked for the constitutional recognition of its leading role in the future affairs of the State. The majority of the pro-democracy and several ethnic groups simply cannot accept the SPDC's demand for unchecked prerogatives.

Apparently, the SPDC hopes to reserve for itself a huge chunk of governance under the new constitution. In this way, it hopes to change its status from an illegitimate ruler of the country to the legitimate leader. Nothing less appears to be compromisable for the SPDC. Therefore, it seems as if the Burmese junta will not make any major concessions in the convention that is setup only to endorse the constitution it desires.

For the dissident groups, they see the convention as a key opportunity to deny the junta's insistence that it be made the leader constitutionally. Many groups have called for changes to be made to the convention procedures. In fact, this step is a compromise twice removed from the original call for comprehensive negotiations between the Burmese junta and all other national stakeholders. However, even procedural compromises are not likely to be conceded by the SPDC leaders, in which case it is likely that many oppositionists will continue to boycott the convention.

When asked if he would participate in the proposed National Convention, Khun

Markoban, an ethnic Member of Parliament from the National League for Democracy (NLD), responded with a qualified “No.” Markoban was an NLD attendee to the convention in 1993. He left the convention and Burma altogether when he realized the extent of the regime’s blatancy in achieving its goals. He said, “I will not endorse a charter entirely characterized by authoritarian features.”

Aung Moe Zaw, another exile and the Chairman of the Democratic Party for a New Society, said that he and his group had staunchly opposed the convention from the very outset. He contended that if the SPDC did not make changes to the convention procedures and retract their demand for the armed forces’ leading place in the affairs of the State, it would be difficult to resume the convention. He described the SPDC’s attempt as “rowing the boat by itself with all the stakeholders whose hands are tied behind their backs on it.”

Their concerns and suspicions are justified. Let’s have a look at the arguments.

First, going back to the convention means repudiation of the 1990 election results, which the pro-democracy groups and several ethnic groups hold dear. It is unimaginable that the primary issue of the opposition, especially of the NLD, would be conceded without anything concrete given in return. They had planned to bargain with the election results on the table, but the denial of negotiations has prevented any possible compromise. In this situation, most of the mainstream political and ethnic groups have nothing but the election results to hang onto.

Second, Rangoon has yet to spell out any specifics of the convention, such as composition of the representations, timeframe, procedures, etc. All that is known about the convention is that it will be devoted to discussions of the proposed constitution, which the majority of the dissidents have long voiced their opposition to. The only other information that has recently emerged is the recruitment across the nation of representatives for and by the SPDC. According to the Network for Democracy and Development in Burma, which monitors the activities of the Burmese regime, a total of 144 delegates have been chosen. This, however, has been done in secrecy. Indeed, the opaque nature of the selection process and the absence of many other indispensable details have kept everyone weary of the convention.

Third, given past experience, the convention is likely to be a forum in which the delegates will rubberstamp the military constitution. Further, the convention’s regulations are as murky and uncompromising as its procedures. Article 43 of the 1993 Conventional Regulations stipulates that “suggestions and presentations must be made within the framework of discussion allowed” and that “the regulations and restrictions to that effect must not be violated.” In other words, nothing other than the presentation of papers that had already been censored and approved by the Convention Commission were allowed. There is a widespread belief that this aspect will remain the same if the convention resumes.

Fourth, the proposed constitution does not guarantee democratic rights. The only aspect that remotely resembles any democratic principle is the election that the SPDC have promised as part of the “roadmap to democracy.” There was no mentioning of freedom of judiciary, media, freedom of speech, association and many other aspects that are core to democracy.

Fifth, the proposed constitution does not mention anything about the principle of federalism, a concept that all of the ethnic and the majority of the pro-democracy groups would like to see established. The composition of the States and Divisions remain the same as in the 1974 Socialist Constitution. There has been a strong argument on the part of the dissidents that it will be a formula for failure. They have rightly pointed out that even the 1947 Constitution, one that was far more democratic in all aspects than the Socialist Constitution, lasted only 14 years because it did not adequately address the demands of the country’s ethnic nationalities.

Finally, if the convention goes ahead and ratifies the constitution, the prospect of reconciliation between the disparate groups of dissidents and the Burmese armed forces will not be realized. As reconciliation requires uncovering the truth about abuses, including the participation of victims and perpetrators of crimes in that process, opposition groups are convinced that the junta is not prepared to go down that road. They argue that if the junta had genuinely wanted to reconcile with its violent past and opponents, it would not have devised such an adamant plan for transition.

So far only a few groups, notably the Kachin Independence Organization and the National Unity Party, the latter being the former ruling Burma Socialist Program Party and an ally of the Rangoon Administration, have openly consented to attend the convention. Given the strong-arm tactics of the Burmese regime however, several other ethnic ceasefire groups are likely to join the convention. But most of the major political organizations including the NLD are likely to shun the convention. If this happens and if the SPDC goes ahead with its plans, taking only a few ethnic and political groups on board, the legitimacy of the convention and its results will be questioned.

In reality though, the oppositionists are in a dilemma. There is no way out for them. They cannot support the convention in its current setup. And if the convention is held and the junta’s aims are realized, they know that the conflict will persist because none of their aspirations for freedom and federalism will have been met. Yet if they continue to voice their opposition to the convention, this will also be a sure way to continue the conflict.

Nonetheless, the dilemma of Burmese politics is that if the SPDC and all other stakeholders could cooperate and meet somewhere in the middle, it would benefit all parties. But the Titans from the opposition groups have not come up with any clear bargaining positions to avoid the clashes of diverse interests vested in the

future of the country. Nor is the Burmese regime prepared to compromise.

Undoubtedly, so long as the Titans continue to clash over an asymmetry of interests, without backing down, the conflict's destructive outcome will continue to cast a shadow over Burma and its people.

### **Endnotes**

\* The author is a research associate with Washington-based **The Burma Fund**.

**ANNEX****THE PANGLONG AGREEMENT, 1947 ( \*)**  
(signed February 12, 1947)

A conference having been held at Panglong, attended by certain Members of the Executive Council of the Governor of Burma, all Saohpas and representatives of the Shan States, the Kachin Hills and the Chin Hills:

The Members of the Conference, believing that freedom will be more speedily achieved by the Shans, the Kachins and the Chins by their immediate co-operation with the Interim Burmese Government:

The Members of the Conference have accordingly, and without dissentients, agreed as follows: -

1. A representative of the Hill Peoples, selected by the Governor on the recommendation of representatives of the Supreme Council of the United Hill Peoples (SCOUHP), shall be appointed a counselor to the Governor to deal with the Frontier Areas.

2. The said Counselor shall also be appointed a Member of the Governor's Executive Council, without portfolio, and the subject of Frontier Areas brought within the purview of the Executive Council by Constitutional Convention as in the case of Defence and External Affairs. The Counselor for Frontier Areas shall be given executive authority by similar means.

3. The said Counselor shall be assisted by two Deputy Counselors representing races of which he is not a member. While the two Deputy Counselors should deal in the first instance with the affairs of the respective areas and the Counselor with all the remaining parts of the Frontier Areas, they should by Constitutional Convention act on the principle of joint responsibility.

4. While the Counselor, in his capacity of Member of the Executive Council, will be the only representative of the Frontier Areas on the Council, the Deputy Counselors shall be entitled to attend meetings of the Council when subjects pertaining to the Frontier Areas are discussed.

5. Though the governor's Executive Council will be augmented as agreed above, it will not operate in respect of the Frontier Areas in any manner which would deprive any portion of these Areas of the Autonomy which it now enjoys in internal administration. Full autonomy in internal administration for the Frontier Areas is accepted in principle.

6. Though the question of demarcation and establishing a separate Kachin State within a Unified Burma is one which must be relegated for decision by the Constituent Assembly, it is agreed that such a State is desirable. As first step towards this end, the Counselor for Frontier Areas and the Deputy Counselors shall be consulted in the administration of such areas in the Myitkyina and the Bhamo District as are Part II Scheduled Areas under the Government of Burma Act of 1935.

7. Citizens of the Frontier Areas shall enjoy rights and privileges which are regarded as fundamental in democratic countries.

8. The arrangements accepted in this Agreement are without prejudice to the financial autonomy now vested in the Federated Shan States.

9. The arrangements accepted in this Agreement are without prejudice to the financial assistance which the Kachin Hills and the Chin Hills are entitled to receive from the revenues of Burma, and the Executive Council will examine with the Frontier Areas Counselor and Deputy Counselors the feasibility of adopting for the Kachin Hills and the Chin Hills financial arrangements similar to those between Burma and the Federated Shan States.

\* Reproduced in the *Report of the Frontier Areas Committee of Enquiry*, Government Press, Rangoon, 1947. Also checked with copy of Agreement preserved by U Vum Ko Hau, Minister in Paris, who took part in the Panglong conference as a leader of the Chins.

**EXTRACT FROM BURMA CONSTITUTION BY DR. MAUNG MAUNG**

The commanders take great care to see that the Services do not grow into a privileged class of professional soldiers, haughty and aloof.

One hope for democracy in Burma has been the strict neutrality observed by the defense Services in party political strife. At the height of the insurrections when the Union Government lay besieged in Rangoon, the Services could have taken over power, but they were attempted. The role of the Services as the guardian of the constitution and servant of the people has been clearly defined and deeply impressed on all officers and men by General Ne Win and the senior commanders, by Deputy Prime Minister and Minister of Defense U Ba Swe, and Prime Minister U Nu, General Ne Win liked to take the examples of the Burma National Army on the eve of the resistance which was infiltrated by the Communists, and the Burma Army in 1948 which was infiltrated again by the Communists. The Army, riddled with Communist cells, was nearly falling apart, and it took the resistance, in the first case, and the insurrections, in the second, to clean it and whip it up into fighting form again. This, General Ne Win warns, must never happen again.<sup>1</sup>

The test for the Defense Services came in May, 1958, when the AFPFL split into two, and Deputy Prime Minister U Ba Swe and Prime Minister U Nu turned overnight from colleagues into opponents. Tension rose high in the country as the two factions canvassed for support, often hurling charges against each other. All through the power struggle, the Defense Services remained strictly neutral. General Ne Win's instructions were to keep aloof from the struggle, and to serve the Government which came into power by democratic means; if one felt out of sympathy with such a Government, one must resign from the Services, and register his protest in politics or otherwise as a free citizen.

The framers of the constitution, fearing the prospect of military dictatorships, had considered inserting the following section in the constitution:

'(1) The supreme command of the Armed Forces shall be vested in the President, but the President shall not exercise the supreme command except through a Defense Council appointed by him on the recommendation of the Prime Minister.

(2) Subject to these provisions the exercise of the supreme command of the Armed Forces shall be regulated by law.'<sup>2</sup>

The section, however, was dropped at the final discussions of the drafting committees. It was decided that the Defense Services should be treated equally with other civilian services, and placed under a civilian ministry. The Defense Council also, it was thought, was a matter of administrative detail which did not require special provision in the constitution. Bogyoke Aung San himself considered that military dictatorships could not be prevented by constitutional provisions, but only by the commanders and men of the Defense services themselves who's education and thinking and ideals must firmly keep their minds from ever yearning for dictatorial power.

That hope has been largely fulfilled. The Defense Services have served under the direction of a civilian Minister of Defense and the National Defense council on which other civilian ministries, such as the Home Ministry, are represented, and over which civilian Ministers preside. In the bewildering and fast-changing scene of Burma's politics, the un-swinging dedication of the defense Services to the service of the country, and not any political party or any political leader or group, must remain a hope for the future.

<sup>1</sup> Inaugural speech at the psychological warfare training course for Defense Services officers, December, 1957.

<sup>2</sup> Draft of the Constitution, ('pink book'), Government Press, July 30, 1947, page 8, section 58.

**EXTRACT FROM THE DETAILED CONSTITUTIONAL PRINCIPLES  
APPROVED BY THE NATIONAL CONVENTION**

**Aim of the National Convention**

- (1) Non-disintegration of the Union;
- (2) Non-disintegration of national unity;
- (3) Stability of sovereignty;
- (4) Development of genuine multi-party democracy;
- (5) Promotion of social truths such as justice, freedom, equality & etc. in the state;
- (6) Participation of the military in the leading role of national politics in the future State.

**Chapter on the State**

1. Burma is a sovereign and independent State.
2. The State shall be called Republic of the Union of Burma.
3. The State is the country in which the various ethnic nationalities collectively live
4. The sovereignty of the State emanates from the citizens and abides throughout the
5. The bounds of the State that include the land, sea and air are those that exist at the time when the Constitution comes into force.

**Formation of the State**

1. The State is established on the Union system.
2. The State is divided and demarcated as seven Regions, seven States and Union Territories, as follows:
  - Kachin State
  - Kayah State
  - Karen State
  - Chin State
  - Sagaing Region
  - Tanessarim Region
  - Pegu Region
  - Mergui Region
  - Mandalay Region
  - Mon State
  - Arakan State
  - Rangoon Region
  - Shan State
  - Irrawaddy Region
  - Union Territories.
3. The respective Regions and States are equal in status.
4. For the change of name of a Region or a State, the question shall be put to a referendum of the eligible voting citizens of that Region or State, and shall be changed by the enactment of law.
5. The Regions, States, Union Territories, Autonomous Units that are in the country, shall never secede from the State.

**6. In uniting of the State**

- Villages shall be grouped together as a Village Tract;
- Wards shall be grouped together as a City or Township;
- Village Tracts and Wards or Cities shall be grouped together as a Township;
- Townships shall be grouped together as a District;
- Districts shall be grouped together as a Region or State;
- In the Autonomous Zone, the townships in that Zone shall be grouped together as the Autonomous Districts;
- In the Autonomous Division, the townships in the Division shall be grouped together as districts, and the districts shall be grouped together as the Autonomous Division;
- If in a Region or a State there is an Autonomous Division or Autonomous Zone, the Autonomous Division, Autonomous Zone and Districts shall be grouped together as the Region or State; and
- The Regions, States and Union Territories shall be grouped together as the State.

**7. Alteration of the State's Border**

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**8. Alteration of border of a Region or State**

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**9.**

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**10. Designation of Union Territories**

- (a) Rangoon, which is the capital of the country, is designated as Union Territory under the direct administration of the State President.
- (b) Coco Island Township, which is under a unique situation, is designated as Union Territory under the direct administration of the State President.
- (c) Due to the need relating to defense, security, administration, economy and etc. of the State, territories under unique situation may be designated as a Union Territory, under the direct administration of the State President, by enactment of a law.

**The Legislature**

**1. Legislation**

- (a) The legislative power of the State is apportioned to the Union Assembly, the Regional Assemblies and the State Assemblies.
- (b) The autonomous territories are vested with the legislative power as provided for by the Constitution.

**2. The Two Assemblies**

- (a) The Assembly composed of representatives, elected on the basis of population, and the military personnel, submitted as representatives by Chief of Staff of the Defense Forces, shall be known as the People's Assembly; and
- (b) The Assembly composed of equal numbers of representatives, elected by the Regions and States, and military personnel, submitted as representatives by Chief of Staff of the Defense Forces, shall be known as the National Assembly.

**3. The Union Assembly**

The Union Assembly consists of the following two assemblies:-

- (a) The People's Assembly composed of representatives elected on the basis of population and military personnel, submitted as representatives by Chief of Staff of the Defense Forces; and
- (b) The National Assembly composed of equal numbers of representatives, elected by the Regions and States, and military personnel submitted as representatives by Chief of Staff of the Defense Forces.

#### **4. Size of People's Assembly**

The People's Assembly shall be composed of a maximum of 440 representatives (members)<sup>2</sup> as follows;

- (a) No more than 330 representatives elected on the basis of population; and
- (b) No more than 110 military personnel, nominated and submitted as representatives, pursuant to law, by Chief of Staff of the Defense Forces.

#### **5. Officers and Deputies of the Assemblies**

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#### **6. Election of *Thabarpati* of People's Assembly**

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#### **7. Election of People's Assembly Chairman and Vice-chairman**

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#### **8. Functions and dismissal of People's Assembly Chairman and Vice-chairman**

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#### **9. Duties, powers and rights of Chairman and vice-chairman of People's Assembly**

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#### **10. Status of Chairman and Vice-chairman of Assembly**

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#### **11. In the People's Assembly**

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#### **12. Term of the People's Assembly**

The term of the People's Assembly is five years from the day it holds its first session.

#### **13. The National Assembly**

The National Assembly shall be formed with a maximum number of 224 members as follows:

- (a) A total of 168 elected representatives, elected on the basis of 12 per Region, including the Union territories, and 12 per State, among whom shall be one representative from each Autonomous Division or Province;
- (b) A total of 56 military personnel, whom Chief of Staff of the Defense Forces has nominated and submitted as representatives, pursuant to law, on the basis of four per Region, including Union Territories, and four per State.

#### **14. Election of *Thabarpati* of National Assembly**

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#### **15. Election of Chairman and Vice-chairman of National Assembly**

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**16. Functions and dismissal of National Assembly Chairman and Vice-chairman**  
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**17. Duties, powers, and rights of Chairman and Vice-chairman of National Assembly**  
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**18. Status of Chairman and Vice-chairman of National Assembly**

For reference in the enactment of law regarding the duties, powers and rights of the Chairman and Vice-chairman of the National Assembly, the status of Chairman is admitted as equivalent to that of the Vice-President and the status of Vice chairman is admitted as equivalent as that of the Union Minister.

**19. Formation of National Assembly Committees**  
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**20. Formation of National Assembly Commissions and Bodies**  
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**21. Term of National Assembly**

The term of the National Assembly is the same as that of the People’s Assembly. The term of the National Assembly expires, as well, on the date on which the term of the people’s assembly expires.

**22. Functions of Patron and Vice-Patron of Union Assembly**  
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**23. Formation of Regional and State Assemblies**  
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**24. Election of the *Thabarpati* of Regional or State Assembly**  
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**25. Election of Chairman and Vice-chairman of Regional or State Assembly**  
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**26. Functions and termination of duties of Chairman or Vice-chairman of Regional or State Assembly**  
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**27. Duties, powers and rights of Chairman and Vice-chairman of Regional or State Assembly**  
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**28. Status of Chairman and Vice-chairman of the Regional or State Assembly**  
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**29. Formation of Regional or State Assembly Committees**  
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**30. Term of Regional or State Assembly**

The term of the Regional or State Assembly shall be the same as that of the People’s Assembly. On the day that the term of the People’s Assembly expires, so does that of the Regional or State Assembly.

**31. Duties, powers and rights of members of People's Assembly, National Assembly and Regional or State Assembly**

The duties, powers, and rights of members of the People's Assembly, National Assembly and Regional or State Assembly shall be regulated by law.

**32. Qualifications of candidates for People's Assembly**

A person having the following qualifications have the right to stand as a candidate in the election to the People's Assembly. A person who:

- (a) Has attained to the age of 25 years;
- (b) Is a citizen, both the parents of whom are citizens;
- (c) Has resided continuously in the Union of Burma, for at least 10 years, at the time of the election;
- (d) Possesses qualifications as stipulated in the election law.

**33. Persons not eligible to be candidate in election to People's Assembly**

The following persons shall not be eligible to stand as a candidate for election to the People's Assembly. A person who:

- (a) Has been convicted by a court of law for a certain crime and is currently serving a prison term;
- (b) Has been banned, by the authority concerned, either prior or subsequent to the enactment of this Constitution, for violation damaging his/her own qualification required to be a candidate to the People's Assembly, and the term of the ban against him/her has not yet expired;
- (c) By the relevant law, is categorized as insane;
- (d) Has yet not been released from bankruptcy, as declared by the relevant court;
- (e) Owes allegiance to a foreign government, or a subject of a foreign government or a citizen of a foreign country,
- (f) Is a beneficiary to privileges entitled to the subject of a foreign government or citizen of a foreign country;
- (g) Directly or indirectly receives and uses money, land, house, building, vehicle, property and etc., of a foreign country, or a religious or other organization, or is a member of an organization which receives such support;
- (h) For politics, uses religion, speaks or gives a speech or issues a statement urging to give or not to give votes, or who encourages such things to be done, or is a member of an organization engaged in such activities;
- (i) Is a religious servant;
- (j) Is a state servant;

Exception: The term shall not apply to military personnel, who are members of the Assemblies.

- (k) Directly or indirectly receives or uses the State's money, land, house, building, vehicle, property and etc., or is a member of an organization which receives and uses such things;

Exceptions:

- (1) The expression, "State's money" does not include pension, allowances, cash, or the salary, allowances and cash awarded legally by the State for good services to the State;
- (2) The expression, "State's land, house, building, vehicle, property" does not include the use, pursuant to a certain law or, allowed by the State to use while on duty - the use of State-owned land, house, building and room, other building and room, State-owned airplane, train, vehicle, property and etc., or hired with the State's money.
- (l) Has been banned by authorities concerned, either prior or subsequent to the enactment of this Constitution, from election to the People's Assembly for unbecoming conduct,

in violation of the election law, or failed to abide by the provisions of the election law, and the term of ban against him/her has not yet expired.

**34. Qualification of military representatives to People’s Assembly**

The military personnel nominated and submitted by Chief of Staff of the Defense Forces according to law, shall also have the qualifications as specified for the candidates to the People’s Assembly.

**35. Qualifications of candidates to National Assembly**

Candidates to the National Assembly

- (a) Shall have attained to the age of 30 years;
- (b) Shall have the same qualifications as those specified for the candidates to the People’s Assembly, except the age limitation;
- (c) Shall also be subjected to the provisions disqualifying candidates in election to the People’s Assembly.

**36. Qualification of military personnel nominated to National Assembly**

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**37. Qualifications of candidates to Regional or State Assembly**

Candidates in election to the Regional or State Assembly:

- (a) Shall have the same qualifications as specified for candidates to the People’s Assembly;
- (b) Shall also be subjected to the provisions disqualifying candidates in elections to the People’s Assembly.

**38. Qualifications of military personnel nominated to Regional or State Assembly**

The military personnel nominated and submitted by Chief of the Defense Forces, according to law, for the Regional or State Assembly, shall also have the same qualifications as specified for the candidates to the Regional or State Assembly.

**The Executive**

**1. The Union Government**

- (a) Chief of the State Executive is the State President.
- (b) (1)The executive power of the State is apportioned to the Union, the Regions and the States.  
(2) The autonomous areas are vested with the executive power as provided for by the Constitution.
- (c) In the State, the Union Government is formed with the following officers:
  - (1) State President,
  - (2) Vice-Presidents,
  - (3) Union Ministers,
  - (4) Union Attorney General.
- (d) The State President, with the approval of the Union Assembly:
  - (1) May specify the number of Union ministries, as required, and effect changes to them;
  - (2) May specify the number of Union Ministers as necessary and vary the number specified.
- (e) Union Ministers shall have the following qualifications:
  - (1) Having attained to the age 40 years;
  - (2) Having the qualifications necessary for candidates to the People’s Assembly, except the requirement for age;

- (3) Being loyal to the State and the citizens.

## **2. Appointment of Union Ministers**

- (a) The State President, for the appointment of Union Ministers:
- (1) Shall nominate appropriate persons, whether from among members of the Assembly or non-members, who have the specified qualifications;
  - (2) Shall obtain the list of names of appropriate members of the armed forces from Chief of Staff of the Defense Forces, for the defense, security/home and border affairs ministries;
  - (3) Shall consult with Chief of Staff of the Defense Forces, if he so desires to appoint members of the defense forces as ministers for ministries other than defense, security/home, or border affairs.
- (b) The State President shall submit the list of persons he has nominated and the one received from the Chief of Staff of the Defense Forces, to the Union Assembly for approval.
- (c) The Union Assembly shall not have the right to reject the person whom the State President has submitted unless there is a clear proof that he does not possess the qualifications required to become a Union Minister.
- (d) The State President shall have the right to resubmit a new name for approval in place of the person that fails to receive the approval of the Union Assembly.
- (e) The State President shall appoint the persons who have received the approval of the Union Assembly as Union Ministers. In the appointment, the State President shall specify the ministry or ministries that each individual Union Minister shall be responsible for.
- (f) The State President shall inform the Union Assembly, whenever he appoints a Union Minister.
- (g) The Union Ministers shall be responsible to the State President.

## **3. Appointment of Deputy Ministers**

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## **4. Impeachment of Union Minister**

- (a) Any Union Minister may be impeached for any of the following matters.
- (1) Commission of high treason;
  - (2) Violation of a provision of the Constitution;
  - (3) Misconduct;
  - (4) Impairment in qualifications required for a Union Minister as specified in the Constitution.
- (b) If an impeachment of a Union Minister is required, it shall be undertaken in accordance with the provisions in the Constitution specified for the impeachment of the State President or Vice-President.
- (c) However, if the impeachment of a Union Minister proves to be valid, and if the Assembly conducting the investigation reaches the decision that he is no longer appropriate to continue serving in the position of a Union Minister, the State President shall terminate the duty of the Union Minister under impeachment.
- (d) If the Assembly conducting the investigation decides that the impeachment is not true, the Assembly Chairman concerned shall report to the State President on the decision.

## **5. Term, Resignation, Relief from Duty and Filling Vacancy of Union Ministers and Deputy Ministers**

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## **6. The Terminology for Attorney General**

He shall be addressed or referred to as Union Attorney General.

**7. Appointment and Assignment of Duties to Union Attorney General**  
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**8. Impeachment of Union Attorney General**

- (a) The Union Attorney General may be impeached for:
  - (1) Commission of high treason;
  - (2) Violation of a provision of the Constitution;
  - (3) Misconduct;
  - (4) Not having the qualifications specified, in the Constitution, for the Union Attorney General.
- (b) If the impeachment of the Union Attorney General is required, it shall be done according to provisions in the Constitution for the impeachment of the State President or Vice-President.
- (c) However, if the impeachment of the Union Attorney General proves to be valid, and if the Assembly conducting the investigation reached the decision that he is no longer appropriate to continue to serve as the Union Attorney General, the State President shall dismiss the Union Attorney General from duty.
- (d) If the Assembly conducting the investigation decides that the impeachment is not valid, the Assembly concerned shall report to the State President on the decision.

**9. Appointment of Deputy Attorney General**  
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**10. Term, Resignation, Relief from Duty and Filling Vacancy of Union Attorney General and the Deputy Attorney General**  
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**11. Specification of Status of Union Attorney General and Deputy Attorney General**  
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**12. Terminology and Reference to Auditor General**  
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**13. Appointment of Union Auditor General**

- (a) The State President, with the approval of the Union Assembly, shall appoint an Assembly member or a non-member, as the Union Auditor General, who shall have the qualifications mentioned below, to examine the State's budget for the submission of it to the People's Assembly and the National Assembly:
  - (1) Having attained to the age of 45 years;
  - (2) Having the qualifications specified for members of the People's Assembly except the age requirement;
  - (3) (aa) Having served for a minimum of ten years as an auditor in a position that is not lower than that of Regional or State audit officer, or
    - (bb) Having served for a minimum of 20 years as a registered accountant or people's accountant with certificate, or
    - (cc) Having been regarded by the State President as a prominent academic in accountancy, statistics or economics.
  - (4) Being loyal to the State and the citizens.
- (b) The Union Assembly shall not reject the person, submitted for approval, by the State President as the Union Auditor General, unless there is concrete evidence to prove that he does not have the qualifications specified for the Union Auditor General.
- (c) The State President shall have the right to submit a new candidate to the Union Assembly, for the position the Union Auditor General, in the place of the person

failing to receive the approval.

- (d) The Union Auditor General shall be responsible to the State President.

**14. Impeachment of Union Auditor General**

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**15. Appointment of Deputy Auditor General**

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**16. Term, Resignation, Relief from Duty and Filling Vacancy of Union Auditor General and Deputy Auditor General**

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**17. Status of Union Auditor General and Deputy Auditor General**

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**18. Formation of Union Civil Service Commission**

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**19. Status of Chairman of Union Civil Service Commission**

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**20. Terminology for Chief Minister and Members of Regional or State Government**

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**21. Formation of Regional or State Government and Appointment of Regional or State Chief Minister**

- (a) A Regional Government shall be formed in every Region and a State Government shall be formed in every State.
- (b) The Regional or State Government shall be formed with the following persons:
- (1) Regional or State Chief Minister;
  - (2) Regional or State Ministers;
  - (3) Regional or State Legal Chief.
- (c) The State President, with the approval of the respective Regional or State Assembly:
- (1) May specify the number of Regional or State ministries as necessary. In addition, he may alter the number of ministries specified;
  - (2) May specify the number of Regional or State ministers as necessary. In addition, he may alter the number specified.
- (d) The Regional or State Chief Minister and Ministers shall have the following qualifications:
- (1) Having attained to the age of 35 years;
  - (2) Having the qualifications specified for the members of Regional or State Assembly, except the age requirement;
  - (3) Being loyal to the State and the citizens.
- (e) The State President for appointment as the Regional or State Chief Minister shall:
- (1) Select from among the members of the respective Regional or State Assembly, an appropriate member having the specified qualifications;
  - (2) Send the name of the member selected to the respective Regional or State Assembly and obtain its approval.
- (f) The State President shall appoint Assembly member for whom approval has been obtained from the respective Regional or State Assembly, as the Chief Minister of the Region or State.

- (g) The Region or State Assembly shall not have the right to reject the person submitted by the State President as a candidate for the post of Chief Minister, unless concrete evidence can be presented showing that the person does not have the qualifications specified for Regional or State Chief Minister.
- (h) The State President shall have the right to submit a new name to the Regional or State Assembly in place of the candidate, failing to receive the approval of the Regional or State Assembly.

## **22. Appointment of Regional or State Ministers**

- (a) The Regional or State Chief Minister, for the appointment of respective Regional or State Ministers shall:
  - (1) Select appropriate Regional or State Assembly members or non-members having the qualifications as specified;
  - (2) Request for the names of appropriate military personnel from Chief of Staff of the Defense Forces, so as to be able to entrust responsibilities concerning security and border affairs;
  - (3) Obtain the list of names of the Chairmen of governing bodies of the Autonomous Divisions or Autonomous Territories within the respective Region or State;
  - (4) Obtain the list of the names of Assembly members elected to administer the affairs of the ethnic nationalities in the respective Region or State, from the respective election commission.
- (b) The Regional or State Chief Minister shall submit the list of the candidates he has selected, together with the list of military personnel obtained from Chief of Staff of the Defense Forces, to the Regional or State Assembly for approval.
- (c) The Regional or State Assembly shall not have the right to reject anyone submitted by the Regional or State Chief Minister, for positions of Regional or State Ministers, unless there is concrete evidence to prove that a candidate does not possess the qualifications specified for Regional or State Ministers.
- (d) The Regional or State Chief Minister has the right to submit a new list of names to the respective Regional or State Assembly, in place of the candidates failing to receive approval of the Regional or State Assembly, for appointment as Regional or State Ministers.
- (e) The Regional or State Chief Minister shall submit the list of the candidates that have received the approval of the Regional or State Assembly, the Chairmen of the Autonomous Divisions or Autonomous Territories, and Assembly members elected to administer the affairs of the nationalities, to the State President for appointment as Regional or State Ministers.
- (f) The State President shall appoint the candidates, whose names have been submitted by the Regional or State Chief Minister, as Regional or State Ministers of the respective Region or State. In appointing thus, the State President, in consultation with the Regional or State Chief Minister, allocate each Regional or State Minister the ministry or ministries he shall be responsible for.
- (g) The State President shall:
  - (1) Entrust the Chairman of Autonomous Division and Chairman of Autonomous Territory, who are Regional or State Ministers, with the responsibility to perform the affairs of the respective autonomous division or autonomous territory.
  - (2) Entrust the Assembly member elected to administer the affairs of the ethnic nationalities, which are Regional or State Ministers, with the responsibilities to serve the respective ethnic nationalities.
- (h) In the appointment the respective Chairman of the Autonomous Division or Autonomous Territory or Assembly member elected to serve the affairs of the ethnic

nationalities as a Regional or State Minister, the State President may be lenient with regard to age requirement specified for in the Constitution.

- (i) The State President, may, in consultation with the Chief Minister, entrust the Autonomous Division or Autonomous Territory or Ethnic Affairs Ministers with the responsibility to concurrently head other ministries.
- (j) If the Regional or State Chief Minister wishes to appoint military personnel as ministers for other Regional or State ministries, other than the security and border affairs ministries, he shall request a list of names from Chief of Staff of the Defense Forces, obtain approval of the Regional or State Assembly and submit it to the State President.
- (k) The State President shall notify the respective Regional or State Assembly, as well as, the Union Assembly of the appointment of Regional or State Chief Minister and Ministers.
- (l) (1) The Regional or State Chief Minister shall be responsible to the State President.  
(2) The Regional or State Ministers shall be responsible to their respective Regional or State Chief Minister and, through the respective Regional or State Chief Minister, to the State President.
- (m) The term of office of the Regional or State Chief Minister and Ministers shall normally be the same as that of the State President.

### **23. Impeachment of Regional or State Chief Minister or a Minister**

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### **24. Resignation, Relief from Office, and Filling of Vacancy of Regional or State Chief Minister or a Minister**

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### **25. Status of Regional or State Chief Minister and Ministers**

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### **26. Regional or State General Administration Department Chief**

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### **27. Terminology for Regional or State Attorney General**

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### **28. Appointment of Regional or State Legal Officer General**

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### **29. Status of Regional or State Legal Officer General**

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### **30. Terminology for Regional or State Auditor General**

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### **31. Appointment of Regional or State Auditor General**

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### **32. Status of Regional or State Auditor General**

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### **33. Terminology for Autonomous Division or Autonomous Zone Governing Body**

The governing body of the Autonomous Division or Autonomous Zone shall be referred to as the Autonomous Division Supervisory Body or Autonomous Territory Supervisory Body.

**34. Formation of Autonomous Division Supervisory Body and Autonomous Zone Supervisory Body**

- (a) The Autonomous Division and the Autonomous Zone, being self-administrative units, are equal in status.
- (b) In each of the several Autonomous Divisions and Autonomous Zones, the Autonomous Division Supervisory Body or the Autonomous Zone Supervisory Body is formed. These supervisory bodies also exercise the legislative power entrusted to them by the Constitution.
- (c) The Autonomous Division Supervisory Body or the Autonomous Zone, Supervisory Body shall have a minimum of 10 members.
- (d) The Autonomous Division Supervisory Body or the Autonomous Zone Supervisory Body shall be formed with the following persons:
  - (1) Regional or State Assembly members elected from the townships that are in the Autonomous Division or Autonomous Zone;
  - (2) The military personnel who have been submitted, according to law, by the Chief of Staff of the Defense Forces for the purpose of undertaking the security or border affairs responsibilities;
  - (3) Representatives selected by persons mentioned in subparagraphs (1) and (2).
- (e) Members of the Autonomous Division Supervisory Body or Autonomous Zone Supervisory Body, mentioned in Paragraph (d), Subparagraphs (1) and (2), above, shall consult among themselves and elect an appropriate Regional or State Assembly Member, elected from the townships in the Autonomous Division or Autonomous Zone, as Chairman of the Autonomous Division or Autonomous Zone. The person thus elected shall be submitted to the State President through the Regional or State Chief Minister.
- (f) The State President shall appoint the person whose name has been submitted as Chairman of the respective Autonomous Division or Autonomous Zone.
- (g) The position of Chairman of the Autonomous Division or Autonomous Zone shall be equivalent to that of the Regional or State Minister. Therefore, provisions applying to Regional or State Ministers shall, with the exception of the appointment procedure, shall also apply to Chairman of the Autonomous Division or the Autonomous Zone.
- (h) The respective Chairman of the Autonomous Division or Autonomous Zone and members of the Supervisory Body:
  - (1) Shall select an ethnic representative from each of the ethnic nationalities, having a reasonable population of at least 10,000 and above as recognized by appropriate authority and living in the Autonomous Division or Autonomous Zone, apart from the ones that already have an Autonomous Division or Autonomous Zone of their own, to be members in the Autonomous Division Supervisory Body or Autonomous Zone Supervisory Body. The persons to be selected thus shall have the qualifications specified for Regional or State Assembly members.
  - (2) If the number of members of the Autonomous Division Supervisory Body or the Autonomous Territory Supervisory Body has not reached the required 10, the needed number of representatives shall be selected from among the appropriate residents of the Autonomous Division or Autonomous Zone, who have the qualifications specified for members of the Regional or State Assembly.
- (i) The Chief of Staff of the Defense Forces may, as necessary, fill up positions for the military personnel whose number in the Autonomous Division Supervisory Body or Autonomous Zone Supervisory Body is at least one fourths the total number of the supervisory body members.
- (j) The military personnel whose names Chief of Staff of the Defense Forces has submitted, according to law, for entrusting responsibilities as members of the Autonomous Division or Autonomous Zone Supervisory Body, shall have the qualifications specified for members of the Regional or State Assembly.
  - (1) The respective Autonomous Division Supervisory Body Chairman or Autonomous

Zone Supervisory Body Chairman shall announce the names of the members of the Autonomous Division Supervisory Body or Autonomous Zone Supervisory Body.

- (2) The Autonomous Division or Autonomous Zone Supervisory Body Chairman shall be responsible to the respective Regional or State Chief Minister and, through the respective Chief Minister, to the State President.
- (3) The members of the Autonomous Division or Autonomous Zone Supervisory Body shall be responsible to the Chairman.
- (4) The specification concerning term of office, disciplinary action, resignation, termination from duties, filling of vacancies of the Chairman or members of the Autonomous Division or Autonomous Zone Supervisory Body shall be regulated by law.
- (k) The duties, powers and rights of the Autonomous Division or Autonomous Zone Chairman and members of the supervisory body shall be regulated by law.
- (l) The respective Chief of the General Administration Department of the Autonomous Division or Zone, shall serve, also, as Secretary to the Autonomous Division or Zone Supervisory body. Besides, the Autonomous Division or Zone General Administration Department shall also be the Office of the respective Autonomous Division or Zone Supervisory Body.
- (m) Among the basic principles laid down at the National Assembly plenary session, in place of Paragraph (1) Sub-paragraph (5) of the principles concerning Legislation and Executive, which reads, "matters mentioned in the above Paragraph (d), Sub- paragraphs (5) and (6), paragraph (g) Sub-paragraph (5) and, Sub-paragraph (4) of this Paragraph are to be implemented by the State by forming a commission," shall be, "matters mentioned in the above Paragraph (d) Sub-paragraphs (5) and (6), Paragraph (g) Sub-paragraph (5) and Sub-paragraph (4) of this Paragraph shall be implemented by the National Assembly at the same time.

### **35. Administration of Rangoon City Union Territory**

- (a) Rangoon City, which is the Union territory, includes all the districts and townships that are in the municipality at the time this Constitution comes into force.
- (b) The State President may, as necessary, re-designate the districts and townships in Rangoon City, which is the Union Territory.
- (c) The State President:
  - (1) Shall establish Rangoon City Council;
  - (2) Shall appoint persons having the specified qualifications as City Council Chairman and Members.
  - (3) Shall obtain names of military personnel, having the specified qualifications, from Chief of Staff of the Defense Forces, for appointing as Council Members and entrusting responsibilities relating to matters of security of Rangoon City.
  - (4) May specify, according to law, the number of members, including Chairman, for the Rangoon City Council, as necessary.
- (d) The Council Chairman and Members shall have the following qualifications:
  - (1) Having attained to the age of 35 years;
  - (2) Having qualifications specified for members the People's Assembly, except the age requirement,
  - (3) Having other qualifications as Specified by the State President.
- (e) The Rangoon City Council Chairman shall be responsible to the State President and the Members shall be responsible to the Rangoon City Council Chairman and, through the Chairman, shall also be responsible to the State President.
- (f) Term of Office, Resignation, Termination from Duties and Filling Vacancies
  - (1) The term of office of the Chairman and Members of the Rangoon City Council shall normally the same as that of the State President.

- (2) If the Chairman or any Member of the Council wishes, for some reason, to resign from office before the end of the term, he shall inform the State President in writing, and may resign.
- (3) The State President:
  - (aa) May issue a directive instructing the Rangoon City Council Chairman or any Member who is unable to fulfill his duties, to resign. If he does not comply with the directive, he shall be relieved from duty.
  - (bb) Shall consult with Chief of Staff of the Defense Forces if it concerns the resignation or relief from duty of a military personnel in the Rangoon City Council.
- (4) Due to resignation, or relief from duty, or death or any other reason, if the office of the Rangoon City Council Chairman or that of a council member falls vacant, the State President may, according to provisions of the Constitution, relating to the appointment of Council Chairman and Members, appoint a new Council Chairman or Member. The term of office of new Council Chairman or new Member, thus appointed, shall extend only to the end of the remaining term of the State President.
- (g) If the Council Chairman or any member is a member of any Assembly, he shall be considered as having already resigned as a member of the Assembly on the day he is appointed as Council Chairman or Member.
- (h) If the Council Chairman or any Member is a state employee, he shall be considered as having already resigned from the position of a state employee according to prevailing public service rules and regulations on the day he is appointed as Council Chairman or Member.
- (i) The military personnel, that have been appointed as Council Members for, security matters of Rangoon City, shall not be required to retire or resign from the military.
- (j) If the Council Chairman or any Member is a member of a political party he shall not involve himself in the activities of that political party from the day he is appointed as Council Chairman or Member through out his term of office.
- (k) Formation of the Rangoon City Council, the duties, powers and rights of the Council Chairman and Members shall be regulated by law.
- (l) The Chief of Rangoon City Council General Administration Department is, in term of position, shall be the Secretary of the City Council. The Rangoon City Council General Administration Department shall be the Secretariat of the City Council.

**36. Specification of Status of the Rangoon City Council Chairman and Members**

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**37. Administration of Coco Island Union Territory**

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**38. Administration at District and Township Levels**

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**39. Administration at Ward or Village Tract Level**

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**The Head of State**

- 1. The Head of State is the State President.
- 2. The State President represents the State.

3. The State President receives the highest position among all the citizens throughout the Union of Burma.

#### **4. Qualifications of the State President and Vice Presidents**

- (a) The State President shall be a person loyal to the State and the citizens.
- (b) The State President, himself, and both parents must be indigenous Burmese citizens, born in the jurisdiction of the State.
- (c) The candidate for the State President shall have attained to the minimum age of 45 years.
- (d) The State President shall be a person having vision concerning national affairs, such as politics, administration, economy, military, and others.
- (e) The State President shall be a person who has resided in the State continuously for a minimum of 20 years, at the time of election as the State President.
- (f) The State President, either of his parents, his spouse, any legitimate child or the spouse of any of the legitimate child, shall not be a loyal subject to any foreign government or a person under the influence of a foreign government or citizen of an alien country. They shall not be beneficiaries of privileges and loyalties enjoyed by persons under the influence of a foreign government or citizens of an alien country.
- (g) In addition to the qualifications specified for Assembly Members, the State President shall have the special qualifications specified for the State President.
- (h) The Vice-Presidents shall have the qualification specified for the State President.

#### **5. Election of the State President and Vice-Presidents**

- (a) The State President shall be elected by the Presidential Election Body.
- (b) The Presidential Election Body shall be formed of three groups of Members of the Assemblies, as follows:
  - (1) The group of elected Assembly Members from the Assembly which is composed of equal number of members from the Regions and the States;
  - (2) The group of elected Assembly Members of the Assembly which is composed of members elected on population basis;
  - (3) The group of military personnel, who have been submitted by Chief of Staff of the Defense Forces, to serve as assembly members, in the above mentioned two assemblies.
- (c) Each group shall elect a Vice-President each either from among the Assembly Members or non-Member.
- (d) A body that comprises of Chiefs and Deputy Chiefs of the Union Assembly, and the National Assembly and People's Assembly, shall scrutinize whether the Vice-Presidents elected have the qualifications specified for the State President.
- (e) The Presidential Election Body that includes all the Members of the Union Assembly shall elect from among the three Vice-Presidents the State President.
- (f) A statute shall be enacted to regulate the election of the State President.

#### **6. Term of office of State President or Vice-Presidents**

- (a) The term of office of the State President or Vice-President is five years.
- (b) The State President and Vice-Presidents shall continue to serve their duties until the election of a new State President at the completion of their term in office.
- (c) The State President and Vice-Presidents shall not serve for more than two terms.
- (d) Serving as the State President or Vice-President for an interim period shall not be regarded as a term.
- (e) If, for a certain reason, office of the State President or Vice-President becomes vacant, and the vacancy is filled by a by-election, the term of office of that new State President or Vice-President shall extend till the end of the remaining term of office, only.

**7. The State President or Vice-President shall not be a member of any of the two Assemblies.**

- (a) If the State President or Vice-Presidents are members an Assembly, or state employees, they shall be considered as having resigned or retired on the day they are elected as State President or Vice-Presidents.
- (b) If the State President or Vice-Presidents are members of a political party, they shall not take part in the activities of that political party, from the day they are elected as the State President or Vice-Presidents and throughout their term of office.

**8. Swearing in of State President and Vice-Presidents**

To Solemnly proclaim and swear that he shall:

- (a) Be loyal to Republic of the Union Burma and the citizens;
- (b) Always dedicate to the prevention of disintegration of the Union, prevention of disintegration of the unity among the ethnic nationals, maintenance of sovereignty;
- (c) Abide by the Constitution and also obey and practice the country's laws;
- (d) Perform his duties with honesty and with utmost diligence;
- (e) Promote the natural laws of justice, freedom and equality in the Republic of Burma;
- (f) Sacrifice his life for the State and for the benefit of the Republic of the Union Burma.

**Duties, Powers and Rights of State President and Vice-Presidents**

**9.** The State President and Vice-Presidents shall exercise the duties and powers entrusted by the Constitution and other laws.

**10.** The State President and Vice-Presidents shall not accept any other position that receives salary, expenses and other benefits.

**11.** The State President and Vice-Presidents shall submit to the Chief of the Union Assembly the lists of land, houses, buildings, businesses, money saved, other valuable properties, with estimated value, commonly owned by their families headed by them.

**12.** The State President and Vice-Presidents shall receive the specified salary, expenses and decorations. They shall also receive a decent housing.

**13.** The State President and Vice-Presidents, except in the case of impeachment and dismissal from office, shall receive reasonable pension and support, on retirement at the completion of duties.

**Impeachment of State President or a Vice-President**

**14.** The State President or any of the Vice-Presidents may be impeached for any of the following reasons:

- (1) High treason,
- (2) Violation of provisions of the Constitution,
- (3) Misconduct,
- (4) Lack of qualification of the State President or Vice-President as specified in the Constitution.

**15.** If impeachment against the State President or a Vice-President is to be made, at least one fourth of the total membership of any one of the two Assemblies of the Union Congress shall sign their names and submit their proposal to the respective Assembly Chief.

**16.** The impeachment shall proceed only at the support of at least two thirds the total membership of that assembly.

**17.** If one Assembly supports the impeachment proposal, the other Assembly shall begin

investigation for impeachment or shall form a body for investigation.

**18.** At the time of the investigation, the State President or Vice-President shall have the right to defend himself personally or through representative.

**19.** At the completion of the investigation, if at least two thirds of the total membership of the Assembly, that has undertaken the investigation or has authorized the investigation, decides that there is reason for impeachment, and that it is no longer appropriate for the State President or Vice-President to continue in office, that Assembly shall submit to the Chief of the Union Assembly, a proposal for the dismissal from office of the State President or Vice-President.

**20.** The Chief of the Union Assembly shall, on receiving the proposal, immediately issue a promulgation dismissing the State President or Vice-President from office.

#### **Vacancy of Office of State President or Vice-President**

**21.** If the State President or any Vice-President wishes to resign before the completion of his term he shall be permitted to resign.

**22.** If the office of State President becomes vacant, due to resignation, death or permanent incapacitation, before the end of his term, the Vice-President receiving the second highest vote at the time of the election of the State President, shall serve as Acting State President.

**23.** If the vacancy of the State President office occurs at the time when the Union Assembly is in session, the State President shall immediately notify the Chief of the Union Assembly so as to enable the Union Assembly to elect a new State President, within seven days.

**24.** On receiving the notification from the Acting State President, Chief of the Union Assembly shall arrange for the group of Assembly members who had, initially, elected the State President and Vice-Presidents, to elect a new Vice-President.

**25.** Following the election of a new Vice-President, the Union Assembly shall elect the State President from among the three Vice Presidents.

**26.** If the occurrence of vacancy is not during a session of the Union Assembly, the Chief of the Union Assembly, on receiving the notification from the Acting State President, shall convene the Union Assembly within 21 days and elect the new State President, according to the procedures mentioned above.

**27.** If, before the end of the term, a Vice-President office becomes vacant during the session of the Union Assembly, due to resignation, death, or permanent disability, or for any other reason, the State President shall immediately notify the Chief of the Union Assembly, so as for the electoral body consisting of assembly members, that has elected the Vice-President in question, shall in seven days elect a new Vice-President.

**28.** If the Union Assembly is not in session, the Chief of the Union Assembly shall, within 21 days, after receiving the notification from the State President, convene the Union Assembly, for the respective electoral body consisting of assembly members, to elect a new Vice-President, according to specified procedures.

### **The Judiciary**

#### **1. Distribution of State Judicial Power**

The State judicial power is distributed among:

- (a) The Supreme Court of the Union, the High Courts of the Regions, the High Courts of the States, the Courts of the Autonomous Divisions, the Courts of the Autonomous Zones, the District Courts, the Township Courts, other Courts, established according to law, and Justices appointed according to the Constitution or other laws;
- (b) Military Courts established according to the Constitution or other laws;
- (c) The Constitutional Tribunal.

## **2. Supreme Court of the Union.**

- (a) Supreme Court of the Union is established in the State. The Supreme Court of the Union, without prejudice to the Constitutional Tribunal and the Military Court, is the Union's highest Court.
- (b)
  - (1) Chief of the Union Supreme Court shall be called the "Chief Justice of the Union";
  - (2) A minimum of seven and a maximum of eleven Justices of the Supreme Court of the Union, including Chief Justice of the Union, may be appointed;
- (c)
  - (1) The State President shall appoint the Chief Justice of the Union, with the approval of the Union Assembly.
  - (2) The Union Assembly shall not have the right to reject candidate for Chief Justice of the Union, submitted by the State President, unless there is concrete evidence to prove that the candidate fails to possess qualifications specified by the Constitution for Chief Justice of the Union.
  - (3) The State President shall have the power to submit a new candidate for the position of Chief Justice of the Union, in place of the one rejected by the Union Assembly.
  - (4) The State President shall appoint the candidate approved by the Union Assembly as Chief Justice of the Union.
- (d)
  - (1) The State President, in consultation with Chief Justice of the Union, shall submit a list of candidates to the Union Assembly for approval, for positions of Justices of the Supreme Court of the Union.
  - (2) The Union Assembly shall not have the right to reject, unless there is concrete evidence to prove that the candidates do not have the qualifications, specified by the Constitution, for Justices.
  - (3) The State President shall have the right to submit a new candidate, in place of the one rejected by the Union Assembly.
  - (4) The State President shall appoint the candidates approved by the Union Assembly as the Justices of the Supreme Court of the Union.

## **3. Qualifications for Chief Justice and Justices of the Supreme Court of the Union**

Chief Justice of the Union and the Justices of the Supreme Court of the Union shall have the following qualifications:

- (a) Not younger than 50 years and not older than 70 years of age;
- (b) Possess the qualifications specified for members of the People's Assembly, with the exception of the provision for age;
- (c)
  - (1) Having served a minimum of five years as a Region or State High Court Judge; or
  - (2) Having served a minimum of ten years as a judicial officer or law officer in an office with a status not lower than the Region or State level; or
  - (3) Having worked for a minimum of 20 years as an advocate; or
  - (4) A person regarded by the State President as a famous and dignified expert in law.
- (d) Being loyal to the State and the citizens;
- (e) Not being a political party member;
- (f) Not being an Assembly Member.

## **4. Empowerment of the State President**

- (a) The State President may impeach the Chief Justice of the Union or a Justice of the Supreme Court of the Union for any of the following matters:

- (1) Commission of high treason;
  - (2) Violation of any provision of the Constitution;
  - (3) Gross misconduct;
  - (4) Failing to have qualifications for the Chief Justice of the Union or a Justice of the Supreme Court of the Union, as specified by the constitution.
- (b) If the State President has to impeach the Chief Justice of the Union or a Justice of the Supreme Court of the Union, he shall submit his proposal for impeachment to the Patron of the Union Assembly.
  - (c) The *Patron* of the Union Assembly shall form an investigation body and direct it to conduct an investigation, according to law.
  - (d) An equal number of the People's Assembly and the National Assembly members shall be included in the body. A suitable member from among these shall be entrusted with duties of the chairman of the investigation body.
  - (e) A time period shall also be designated, taking into account the magnitude of the investigation to be conducted.
  - (f) The State President, may either in person or through a representative, witness the impeachment before the investigation body. He shall also have the right to present evidence and witnesses.
  - (g) The Justice under impeachment shall be granted the right to defend himself in person or through a representative during the investigation period.
  - (h) When the investigation body presents its findings, the Patron of the Union Assembly shall submit them to the Union Assembly.
  - (i) If two-thirds of the total membership of the Assembly decide that the impeachment is valid and that the person is no longer suitable to serve as the Chief Justice of the Union or Justice of the Supreme Court of the Union, the *Patron* of the Union Assembly shall notify the State President of the decision.
  - (j) On such notification, the State President shall dismiss the Chief Justice of the Union or the Justice of the Supreme Court of the Union.
  - (k) If the Union Assembly decides that the allegation is not true, the *Patron* of the Union Assembly shall notify the State President of the decision.

##### **5. Impeachment of Chief Justice or any Justices of the Supreme Court of the Union**

- (a) The Chief Justice of the Union or a Justice of the Supreme Court of the Union may be impeached for any of the following matters:
  - (1) Commission of high treason;
  - (2) Violation of any provision of the Constitution
  - (3) Gross misconduct
  - (4) Failing to have the qualifications for Chief Justice of the Union or a Justice of the Supreme Court of the Union, as specified by the constitution.
- (b) Impeachment of Chief Justice of the Union or a Justice of the Supreme Court of the Union shall be undertaken, in accordance with the Constitution.
- (c) If the investigating Assembly decides that the impeachment is valid and that the person is no longer suitable to continue in office, the State President shall dismiss the Chief Justice of the Union or Judge of the Supreme Court of the Union.
- (d) If the investigating assembly decides that the allegation is not valid, the respective Assembly Chairman shall notify the State President of the decision.

##### **6. Term of office of the Chief Justice and the Justices of the Supreme Court of the Union**

The Chief Justice of the Union or a Justice of the Supreme Court of the Union may, unless any of the following matters occurs, remain in service, until the attainment of the age of 70 years:

- (1) Resignation from office on his own free will;
- (2) Termination of service in the office, as a result of impeachment;

- (3) Termination of service, on the recommendation of the medical body, established according to the law, that he is permanently disabled either physically or mentally;
- (4) Death.

#### **7. Independence of Chief Justice and Justices of the Supreme Court of the Union**

- (a) Chief Justice of the Union and the Justices of the Supreme Court of the Union shall be independent from party politics.
- (b) If the Chief Justice of the Union or a Justice of the Supreme Court of the Union is a State employee, he shall be regarded as having been pensioned, according to the existing rules and regulations of the civil service, from the day he is appointed as Chief Justice or a Justice of the Supreme Court of the Union.

#### **8. Duties, powers and rights of Chief Justice and Justices of the Supreme Court of the Union**

The duties, powers and rights of Chief Justice of the Union and the Justices of the Supreme Court of the Union shall be regulated by law.

#### **9. Status of Chief Justice and Justices of the Supreme Court of the Union**

For purposes of reference on enactment of law concerning the duties, powers and rights of Chief Justice of the Union and Justices of the Supreme Court of the Union, the status of Chief Justice shall be admitted as equivalent to that of the Vice-President and the status of Justices of the Supreme Court of the Union shall be admitted as equivalent to that of Union Ministers.

#### **10. Formation of High Court of a Region or State**

- (a) A High Court is established in every Region and State.
- (b) (1) The Chief of the High Court of a Region or that of a State shall be called Chief Justice of the High Court of the Region or the State.  
(2) A minimum of three and a maximum of seven Justices of the High Court of the Region or State, including the Chief Justice, may be appointed in the High Court of the Region or the State.
- (c) (1) The State President, in consultation with the Chief Justice of the Union and the respective Chief Ministers of the Regions or State, shall prepare a list of candidates for the positions of Chief Justices of the High Courts of the Regions and the States and submit it to the respective Regions and States. The Chief Ministers of the Regions and States, in consultation with the Chief Justice of the Union, shall prepare a list of candidates for positions of Justices of the High Court of their respective Regions and the States and submit them to the respective Region or State assemblies.  
(2) The Region or State Assembly shall not have the right to reject the candidate the State President, in consultation with the Chief Justice of the Union and the Respective Chief Minister of the Region or State, has nominated as the Chief Justice of the High Court of the Region or State. It neither shall have the right to reject the candidates nominated by the Chief Minister, in consultation with the Chief Justice of the Union, for positions of Justices of the High Court of the Region or State, unless concrete evidence can be supplied that the candidate or candidates fail to possess qualifications for Chief Justice or Justices of the High Court of the Region or State, as specified by the Constitution.  
(3) A new candidate or candidates can be submitted according to the procedure mentioned in sub-paragraph (2), in place of a candidate or candidates rejected.  
(4) The State President shall appoint the persons approved by the respective Region or State Assemblies as the Chief Justice and Justices of the High Court of the respective Regions or States.

**11. Qualifications for Chief Justice and Justices of High Courts of Regions or States**

The Chief Justices and Justices of the High Courts of the Regions or States shall have the following qualifications:

- (a) Being not younger than 45 years and not older than 65 years of age;
- (b) Having qualifications specified for Regional or State Assembly Members;
- (c) (1) Having served at least for five years as a judicial officer or law officer at a level not lower than that of the Region or State, or having served at least for ten years as a judicial officer or law officer, in an office that has a status not lower than that of the district; or
  - (2) Having worked for a minimum of 15 years as an advocate; or
  - (3) Being regarded by the State President as a famous and dignified expert in law;
- (d) Being loyal to the country and the citizens;
- (e) Being not a political party member;
- (f) Being not an Assembly Member.

**12. Empowerment of State President and Chief Minister of the Region or State**

The State President may impeach the Chief Justice of a High Court of a Region or State, and the Chief Minister of a Region or State may impeach any of the respective Justices of the High Court of the Region or State, for any of the following matters:

- (a) (1) Commission of high treason;
- (2) Violations of any provisions of the Constitution;
- (3) Gross misconduct.
- (4) Failing to have the qualifications for the Chief Justice or Justice of the High Court of the Region or State, as specified by the Constitution.
- (b) If the State President has to impeach the Chief Justice of a High Court of a Region or State, or if the Chief Minister of a Region or State has to impeach any of the respective Justices of the High Court of the Region or State, he shall submit his proposal for impeachment to the Chairman of the Regional or State Assembly.
- (c) The Chairman of the Region or State Assembly shall form an investigation body and direct it to conduct an investigation, according to the law.
- (d) The investigation body is to be formed with Members Regional or State Assembly. A suitable person from among the members shall be entrusted with duties of the chairman of the investigation body.
- (e) A time period shall also be designated taking into account the magnitude of the investigation.
- (f) The State President or respective Chief Minister of the Region or State, may either in person or through a representative, witness the prosecution before the investigation body. He also has the right to present evidence and witnesses.
- (g) The person under impeachment shall be granted the right to defend himself in person or through a representative during the investigation period.
- (h) When the investigation body presents its findings, the Chairman of the Region or State Assembly shall submit it to the Region or State assembly.
- (i) If two-thirds of the total membership of the Assembly Members decide that the impeachment is valid and that the person is no longer suitable to serve in the office as Chief Justice or a Justice of the High Court of the Region or State, the Assembly Chairman shall submit the decision the State President, if it is the Chief Justice, or to the Chief Minister if it is a Justice. The Chief Minister of the Region or State, on receiving such report, shall forward it to the State President.
- (j) On receiving such a report, the State President shall dismiss from office, the Regional or State High Court Chief Justice or Justice, concerned.
- (k) If the Regional or State Assembly decides that the impeachment is not valid, the Chairman of the Region or State Assembly shall inform such a decision, in the case of the Chief Justice, to the State President, and in the case of a Justice, to the Chief

Minister of the Region or State.

### **13. Basis for Impeachment of Chief Justice or a Justice of High Court of Region or State**

- (a) The Chief Justice or a Justice of the High Court of a Region or State may be impeached for any of the following reasons:
  - (1) Commission of high treason;
  - (2) Violation of any provisions of the Constitution;
  - (3) Gross misconduct.
  - (4) Lack of qualifications for Chief Justice or a Justice of the High Court of the Region or State as specified by the Constitution.
- (b) If there is a need to impeach the Chief Justice or Justice of the High Court of a Region or State, a minimum of one-fourth of the total membership of the respective Regional or State Assembly shall sign their names, and submit the proposal to the respective Chairman of the Region or State Assembly.
- (c) Chairman of the Region or State Assembly, concerned, shall form a body for investigation and direct it to conduct an investigation. A time limit for the investigation shall also be designated, taking into account the magnitude of the investigation required.
- (d) During the investigation period, the person under investigation shall be allowed to present a defense either personally or through a representative.
- (e) When the investigation body presents its findings, the Assembly Chairman shall submit it to the respective Regional or State Assembly. If two-thirds of the total membership decide that the impeachment is valid and that it is no longer appropriate for the person, in question, to serve in the office of the Chief Justice or as a Justice of the High Court of the Region or State, the Assembly Chairman shall submit such a decision to the State President, if it is the Chief Justice, or to the Chief Minister, if it is a Justice of the High Court of the Region or State. On receiving such a report, the Chief Minister shall forward it to the State President.
- (f) On receiving such a report the State President shall dismiss from office, the Chief Justice or Justice, concerned, of the High Court of the Region or State.
- (g) If the Region or State assembly decides that the impeachment is not correct, the Chairman of the Regional or State Assembly shall inform such decision, in the case of the Chief Justice, to the State President, and in the case of a Justice, to the Chief Minister of the respective Region or State.

### **14. Term of office of Chief Justice or Justice of High Court of Region or State**

The Chief Justice or a Judge of the High Court of the Region or State may serve in office, until the attainment to the age of 65 years, unless any of the following matters occurs:

- (1) Resignation on his own free will;
- (2) Dismissal from office after impeachment, according to provisions of the Constitution;
- (3) Dismissal from office, on recommendation by a medical body established according to law, for permanent disability, either physically or mentally;
- (4) Death.

### **15. Independence of Chief Justice or Justices of High Court of Region or State**

- (a) Chief Justice or a Justice of the High Court of a Region or State shall be independent from party politics.
- (b) If the Chief Justice or a Justice of the High Court of a Region or State is a State employee, he shall be regarded as having been pensioned, according to the existing rules and regulations of the civil service, from the day he is appointed Chief Justice or a Justice of the High Court of the Region or State.

### **16. Duties, powers and rights of Chief Justice or a Justice of High Court of a Region or State.**

The responsibilities, powers and rights of the Chief Justice or a Justice of the High Court of a Region or State shall be regulated by law.

**17. Status of Chief Justice or a Justice of High Court of a Region or State**

For reference in enactment of law regarding the duties, powers and rights of the Chief Justice or a Justice of the High Court of the Region or State, the status of the Chief Justice is admitted as equivalent to that of a Union Minister, whereas the status of a Justices is admitted as equivalent to that of a Deputy Minister.

**18. Formation of Subordinate Courts under High Court of Region or State**

Under the High Court of the Region or State, various levels of Courts are formed as follows:

- (a) If there is no autonomous territories in the Region or State:
  - (1) District Courts;
  - (2) Township Courts;
- (b) If there are autonomous territories in the Region or State:
  - (1) In an Autonomous Divisions:
    - Divisional Courts;
    - Township Courts.
  - (2) In an Autonomous Zone
    - Autonomous Zone Courts
    - Township Courts
  - (3) In the remaining Region:
    - District Courts
    - Township Courts
- (c) In the Union Territory:
  - (1) District Courts
  - (2) Township Courts
- (d) Other Courts, established according to law

**19. Appointment, duties, powers and rights of Justices**

- (a) Appointment of Justices, empowerment of them with judicial rights, specification of duties, powers and rights of the sub-ordinate Courts of the High Court of a Region or State shall be according to law.
- (b) The formation of employees associations, including the office employees and other levels of employees of the Supreme Court of the Union, High Courts of the Region or State and other Courts, and the specification of responsibilities, powers and rights shall be according to law.